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## Legislative Assembly of Ontario

Second session, 35th Parliament

# Official Report of Debates (Hansard)

Tuesday 1 September 1992

## Standing committee on resources development

Labour Relations and  
Employment Statute Law  
Amendment Act, 1992

## Assemblée législative de l'Ontario

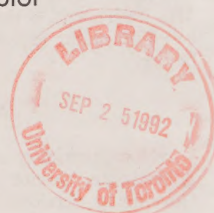
Deuxième session, 35<sup>e</sup> législature

# Journal des débats (Hansard)

Mardi 1 septembre 1992

## Comité permanent du développement des ressources

Loi de 1992 modifiant des lois  
en ce qui a trait aux relations  
de travail et à l'emploi



Chair: Peter Kormos  
Clerk pro tem: Todd Decker

Président : Peter Kormos  
Greffier par intérim : Todd Decker

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### **Renseignements sur l'index**

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 1 September 1992

The committee met at 1000 in committee room 1.

### LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

**The Chair (Mr Peter Kormos):** Good morning. It's 10 o'clock and we're going to proceed with our first presentation.

#### GENERAL MOTORS OF CANADA FORD MOTOR CO OF CANADA CHRYSLER CANADA

**The Chair:** Appearing here first are General Motors of Canada, Ford Motor Company of Canada and Chrysler Canada. Would you please tell us your names and your titles, if any, and proceed with your comments. Please try to save the second half of the half-hour for exchanges and questions.

**Ms Maureen Kempston Darkes:** Thank you, Mr Chairman, for providing us with the opportunity to make this presentation. I am Maureen Kempston Darkes, vice-president of corporate affairs and general counsel, General Motors of Canada Ltd. With me today are Max MacLean, manager of labour relations and hourly personnel at Ford Motor Company of Canada, and Cody Cooper, manager of labour relations and safety at Chrysler Canada. On behalf of the motor vehicle manufacturers, we welcome the opportunity to submit our comments on the proposed reform of the Ontario Labour Relations Act.

The automotive industry is an important industrial sector in Canada, representing approximately 7% of the gross domestic product. In 1991, the Canada-United States trade in automotive products was approximately \$53 billion, 27% of the value of total goods traded between Canada and the United States. The Canadian automotive industry directly employs approximately 140,000 Canadians in the manufacture of vehicles and components, while an estimated 350,000 Canadians are employed indirectly. Most of this employment is situated in Ontario.

All operations are focused around synchronous, just-in-time inventory and manufacturing systems enhanced by the capability of our Canadian supplier community. Over 600 Ontario companies employing more than 75,000 people supply tooling, parts, equipment and services worth over \$13 billion annually to Big Three assembly plants in Ontario, Quebec and across North America.

The automotive industry is focused on a number of strategies to manage its business better, improve produc-

tivity and reduce costs, as well as to produce products and offer services that meet the highest standards of quality and value. We have implemented demand-driven manufacturing systems to reduce production times, lower operating costs and reduce inventory, while simultaneously increasing product quality and improving our responsiveness to react to market changes.

One such technique is flexible scheduling of assembly plant production. It provides a method to better control the order in which jobs flow down the assembly line, to utilize labour and equipment more efficiently and to match production more directly to products our customers want. Operations are centred on manufacturing systems which require a continuous synchronized flow of raw materials and finished products.

Roughly 90% of all production components arrive daily on a just-in-time concept. For example, at GM Canada, Lear Seating Canada builds and delivers seats within hours of receiving an order electronically transmitted from the plant. The result: better inventory management and lower costs.

However, there are risks related to just-in-time delivery systems. We are vulnerable to any interruption in the flow of material, whether it results from a truck border blockade or a strike at one of our suppliers. A strike at critical suppliers is felt immediately in terms of plant shutdowns and could result in massive employee layoffs at vehicle assembly plants and component facilities across North America.

In terms of the reforms proposed in the Ontario Labour Relations Act, we do recognize that the government has made several changes to the original labour reform proposals. However, we continue to have very serious concerns about the impact the proposed legislation will have on jobs and longer-term investment in the province, particularly for automotive part suppliers.

Let me deal with the subject of replacement workers. The domestic North American automotive industry has invested considerable time and resources in order to implement a modern, just-in-time, sequenced system for delivery of materials from suppliers to production facilities. These measures are representative of the industry's actions to be competitive on a global basis and to secure employment for our people in Ontario. These systems, which often involve minimal lead time, have provided significant improvements in operating flexibility, quality and cost. The philosophy going forward must be one of continuous improvement if our industry is going to survive and prosper in Ontario.

The just-in-time system is potentially vulnerable to labour disputes within the supplier community. The government's proposal to prohibit replacement workers during a strike would seriously erode the ability of Ontario-based suppliers to maintain scheduled deliveries to the auto industry's



North American facilities. In fact, such proposals may force Ontario-based suppliers to enter into uncompetitive collective agreements which in the long term may result in the loss of those jobs should the supplier be unable to supply parts to the auto industry at competitive prices. Alternatively, such suppliers could be forced to relocate to other jurisdictions to enable them to ensure continuity of supply of parts to the vehicle assemblers at competitive prices.

The first objective of legislation which regulates collective bargaining should be to create a system which encourages the parties to a collective agreement to bargain to constructively reach an agreement which respects the legitimate needs of both parties. It has been recognized for years that the potential exists that bargaining will reach an impasse and a strike will occur. A basic tenet of labour relations has been to maintain a fair balance in these disputes. Workers who strike are allowed to work elsewhere and/or receive strike benefits financed by the union as a whole.

In the past, the law has recognized that an employer may decide to continue operations in the face of a strike, and indeed may hire replacement workers. The proposed change in the law to prohibit replacement workers during a strike has no demonstrated need. It is merely a proposal to increase the bargaining power of unions.

We strongly believe that if this change is made in the law, it will discourage investments and new jobs in the province. It could cause suppliers to quietly leave, with the resulting loss of jobs, because suppliers can no longer supply the auto industry with parts on a continual basis at competitive prices.

Given the North American scope of the arrangements between the automotive suppliers and assemblers involving just-in-time delivery systems and the growing trend towards long-term sole-source commitments, it is essential that the automotive manufacturers be assured of uninterrupted delivery of materials from Ontario suppliers. This issue is one of paramount importance, not only for the manufacturers and suppliers but also, we believe, for the government of Ontario.

One of the most common motives for operating during a strike is to ensure the preservation of the business, not only during a strike but after its conclusion.

We believe the proposal to effectively ban the use of replacement workers during a strike will foster neither economic growth nor investment. The proposed revisions would only enhance the current aura of uncertainty pertaining to the sourcing of materials in Ontario. Certainty of parts supply is critical to vehicle assemblers.

We are also concerned that the severe constraints on the use of replacement workers could disrupt our own assembly and component operations in the event of a strike by a smaller union within our plants, such as the United Plant Guard Workers of America, the Ontario Nurses' Association or the International Union of Operating Engineers or the Canadian Union of Operating Engineers and General Workers. It is conceivable that a strike by one of these unions could put all other employees at the strike site out of work. Should this event happen, it would hinder the

ability of our assembly plants to be considered as sources for future production allocation.

Although the proposed legislation will permit employers to have the work performed at another location or through a contracting-out arrangement, it makes little sense to do so. Many employers will not have the capacity to transfer the work, particularly manufacturing operations with high quality criteria and specific and complex tooling requirements.

Also, if it is accepted that a supplier can continue to supply from another location or jurisdiction, then surely the supplier should be permitted to operate from its own location. In any event, once work is transferred out, it may never return to the struck location.

#### 1010

To proceed with this recommendation will unduly tilt the balance of power between the parties in favour of the unions. The problem with this proposal is that it is allegedly designed to correct picket line violence. However, picket line violence results not from the use of replacement workers but from mass picketing. If reform is to be meaningful in this area and the real potential for picket line violence minimized, then provisions must be included in Bill 40 which limit picketing to its real purpose: conveying information about the strike.

Stiffer penalties should be considered for those individuals causing the violence on the picket lines. No provisions should be included in Bill 40 which impede the access to and egress from an employer's premises so that it can get its raw materials in and finished goods out during a labour dispute. The right of the union to withdraw its service must be balanced by an employer's right to attempt to carry on business. The essential economic balance between the parties can therefore be maintained.

In our view, the proposals should be amended to provide that employees of a struck company from other facilities would not be considered replacement workers. It should also be a fundamental right for an employee participating in a strike to change his or her mind and return to work at any time of his or her own choosing.

At this point, I'd like to turn the podium over to Cody Cooper of Chrysler.

**Mr Cody Cooper:** I'd like to address the issue of the organization of security guards.

We believe that the proposal to allow security guards to be represented by an all-employee union would place these employees in a serious conflict-of-interest situation. Security guards are responsible for both internal and external elements of security. If a security guard is a member of the same union as an employee a guard must question on an issue of theft, substance abuse or safety, the guard would be placed in a situation which could compromise effectiveness in terms of the ability to act in the best interests of maintaining the security of the facility and the safety of the other employees.

It is simply unrealistic to suggest that security guards would objectively monitor, control and report on the organization and picketing activity of individuals in their own trade union.

The conflict of interest would become most apparent during a labour dispute involving non-security employees. The duty to the employer could entail the requirement to report and testify later against a fellow union member. This could well result in practical difficulties in the arbitration process, where a security person would, at best, be a reluctant witness presenting evidence against a fellow member of the same union. It is arguable that the security person would be subject to internal discipline by the union, given the active testimony against a fellow union member.

We strongly recommend that the present requirement that guards be represented by trade unions which represent guards exclusively be maintained. Our companies have established a mature relationship with the United Plant Guard Workers of America, and we support its representation to this committee to retain section 12 of the act in its current form. Section 12 of the existing act represents a carefully tailored response to the need to balance the legitimate security requirements of the employers while maintaining the right of employees to organize and bargain collectively.

Also, when investment decisions are made, the ability of our facilities to maintain the security of assets from theft and fire and the ability to respond to all emergencies is a factor in such decisions. The security of billions of dollars of buildings and high-technology machinery and equipment should not be made another impediment to future investment in Ontario.

I'd like to turn this over to Max MacLean.

**Mr Max MacLean:** I'd like to deal with the issue of the powers of the arbitrator and the labour relations board.

The reform proposals provide for a broadening of the powers of arbitrators. We have two specific concerns with this proposal. The first concern relates to the power of arbitrators to interpret the provisions of a collective agreement, in that it is proposed that arbitrators will be authorized to decide the real substance of the differences between the parties, mediate disputes etc.

The purpose of the arbitration process is to provide a mechanism for the interpretation and application of the contractual terms agreed to by the parties to a collective agreement, and the current law is designed to provide final and binding decisions in a relatively short time frame without the complexities associated with the courts. In our view, the system works and the parties understand it, and no changes are required.

Secondly, it is proposed that arbitrators have the power to interpret and apply all employment-related statutes, including the Human Rights Code. Should arbitrators be empowered to interpret employment-related legislation, a myriad of conflicting decisions will almost certainly arise. Again, we believe that the powers of an arbitrator should be restricted to interpretation of the collective agreement. In our industry there are mechanisms for settlement of human rights complaints internally. If this process fails, an employee may file a human rights complaint. Surely this gives the employee adequate due process.

Similarly, if an employee or the union feels that provision of an employment-related statute has been breached, the complainant can lodge a protest with, for example, the

employment standards branch if the complaint relates to the Employment Standards Act. Giving arbitrators the power to interpret employment-related laws will only serve to increase uncertainty among employers as to how laws should be interpreted. This uncertainty will not lead to a climate of improved labour relations as envisioned by the government.

It is also proposed that the powers of the Ontario Labour Relations Board should be broadened. We believe these changes, as proposed, have no demonstrated need and will not improve labour relations in the province and have the potential to have a chilling impact on investment in the province of Ontario.

The proposed legislation gives the labour board the power to impose collective agreement provisions. Currently, the parties to a collective agreement are required to resolve their own differences in negotiations. This makes sense in terms of employer-employee relations because these are the parties that have to make the agreement work.

The purpose section of the bill states that bargaining is to improve the terms and conditions of employment. It is not difficult to envision a situation where a union may wish to bargain a new demand which the employer finds unacceptable for competitive reasons. The labour board would, however, under the bill, have the power to impose the union demand and the new collective agreement under the authority of the purpose clause, as it would improve the employees' terms and conditions. However, this imposed provision could render the employer uncompetitive. Should this happen, the employer will either be forced out of business or forced to move his business outside of Ontario. Neither of these consequences make sense to us, nor do we believe they would make sense to the people of Ontario.

It is absolutely essential that the range of the arbitrator's jurisdiction be limited and confined to issues that arise out of a collective agreement between the parties if we are to maintain good management relations in Ontario. Similarly, to broaden their scope of review to include all relevant employment law will take arbitrators into areas where their expertise may be limited and result in conflicting interpretations in the related uncertainty, which is not desirable from either party's point of view.

Also, it is essential that the powers of the Ontario Labour Relations Board be maintained as they are. The board has traditionally under current law been focused on a balance between management and labour and facilitating the parties reaching collective agreements. To broaden the powers of the board to impose terms of a collective agreement has no demonstrated need and will likely lead to job losses in Ontario.

The next subject I would like to address is adjustment and change in the workplace. Government proposals would require the employer and the trade union to negotiate an adjustment plan under certain circumstances. These proposals, however, are unclear in many respects, particularly with regard to the alternatives that will have to be considered by the parties in the event that they are unable to agree.

The auto industry and the CAW negotiated a landmark job and income security program during the 1990 negotiations



which established job and income security protection for employees affected in restructuring and closure situations. We believe these provisions meet all of the requirements of section 20 of Bill 40. In fact, we believe the auto industry program was the model for the drafting of Bill 40. Bill 40 must ensure that where collective agreements provide for structural change and termination, these agreements be deemed to comply with section 20 of the act and no further obligations are incurred in the event of a closure.

The proposals contained in Bill 40 mandate specific negotiation requirements universally, irrespective of whether or not the parties have already bargained similar arrangements. It is absolutely essential that this requirement only apply where a collective agreement fails to deal with this issue.

I'd like to turn the chair back to Maureen.

**Ms Kempston Darkes:** The time allotted to us today does not permit us to cover all issues of concern to us. We will be tabling with you a fuller brief, and in that brief you will find other comments and issues of concern, in particular the subject of contract tendering in the service sector and the requirement to maintain existing service contracts even where they aren't competitive; concerns over the consolidation of bargaining units by the Ontario Labour Relations Board; also, the right of the unions to picket third-party premises, and finally, concerns with certain aspects of the purpose clause. We would ask that you take those comments into consideration in your deliberations.

In conclusion, we believe that the automotive industry will continue to play a very large role in Canada's economy. It is imperative that labour, management and government work together to find solutions to critical issues facing the industry, to allow the automotive industry to invest, to grow, to generate profitability and to provide a base of employment to create and sustain a high quality of life and prosperity for the citizens of Ontario.

Again, Mr Chairman, thank you for listening to our comments. We are prepared to answer any questions which you or your committee members may have.

1020

**The Chair:** Thank you. I hope the automotive industry continues to play a large role in St Catharines' economy.

**Mr Steven Offer (Mississauga North):** Thank you for your presentation. You've touched on a great many areas, and Mr McGuinty will have a question after myself.

I have one question not on your presentation. It is on some information we received earlier that, after the tabling of this piece of legislation, there was a meeting called for and convened in the city of Detroit with the Deputy Minister of Labour and representatives from the three automotive companies, talking about this particular legislation. I'm wondering if you can confirm that type of swirling piece of information, if such a meeting was convened and if you're at liberty to discuss what the gist of that meeting was about.

**Ms Kempston Darkes:** Mr Offer, I was not part of that meeting. I can confirm, however, that such a meeting did take place in Detroit. I believe the deputy minister was there and he undertook to explain some of the reforms to a

number of people. I have no other information on the meeting at this time.

**Mr Dalton McGuinty (Ottawa South):** Unfortunately, time doesn't permit us to get into all of the issues you raise, but one of the things you may very well be aware of is that your industry is held out as proof positive, as irrefutable evidence, that the concerns that are being advanced by business are but hysteria; that in your heart of hearts you really believe Bill 40 won't wreak havoc on Ontario's economy; that the reason you're that proof positive is because you continue to pour money into the province, and if you felt Bill 40 was of major concern, you would not continue to do that. So since you're held out as that example by the government, I'd like you to respond to that today, please.

**Ms Kempston Darkes:** We have at General Motors a very long history of doing business in Ontario and we would obviously very much like that relationship to continue. However, it must be recognized that in order to maintain our facilities, they must be fully competitive to compete in a global context. That means when we look at new investment plans, our plants must compete with those in other provinces as well as in the United States. It means we must be able to maintain a good working relationship with our national and local unions, to continuously improve our flexible working arrangements. It also means we must have the assurance that we will be able to continuously operate our plants to meet our customers' needs and supply the components that we do supply to all GM facilities across North America. So yes, we have a long history of investment in the province. We must remember, however, that all of our plants must retain their full competitiveness if we are to continue to play such a large role in this province.

Perhaps Ford and Chrysler would also like to address that issue.

**Mr MacLean:** I think from a Ford perspective, I certainly wouldn't consider the Ford investment as an endorsement of these proposals. I think in one case the decision was well along before this government got elected, and in the other case, it certainly was a decision from a purely business point of view that put a new product in a plant. We've had absolutely tremendous cooperation from the CAW people there, a great work ethic and a quality producer of automotive products.

**Mrs Elizabeth Witmer (Waterloo North):** I'd like to pursue the point made by Mr McGuinty, because for the past four and a half weeks you have been held up as an example by the government of a group of people who are continuing to invest and don't seem to be concerned at all about Bill 40.

You said in your opening comments, Maureen, that this could lead to loss of jobs and long-term investment. That would happen if the government does not do what—

**Ms Kempston Darkes:** We are concerned that if we are unable to source parts on a continuous basis from the Ontario parts supply community, we would have down time in our major manufacturing facilities in Canada as well as the United States. We must remember that



Ontario-based suppliers not only supply the GM Canada system but they also supply General Motors Corp in the United States. Our concern is that if we cannot be guaranteed a continuous source of supply of those parts, then we would have to consider placing those supply contracts elsewhere.

Similarly, I would point out that we have a number of smaller unions that operate with us in our major manufacturing facilities. For example, we have the United Plant Guard Workers, the nurses' union, the electrical workers; if one of those smaller unions were to go on strike and we were unable to replace those workers, we could have a situation, for example, at our Autoplex facilities in Oshawa, where perhaps a few workers could literally put thousands of workers off the job. We need to guard against those types of situations happening. For that reason we are asking the government to reconsider the legislation in the area of replacement workers, to help us guard against that and to create a greater assurance of supply of components to the North American operations.

**Mrs Witmer:** I'd like to hear from Mr MacLean from Ford. You said that your decision to go ahead this year was made several years ago. If this bill were to be passed in its present form, what type of investment commitment would you be making in the future?

**Mr MacLean:** I can't answer that. That would be pure speculation on my part.

**The Chair:** Thank you. We've got to move on to Mr Huget. If you want to save him some time, Mr Hayes would like to ask a question too.

**Mr Bob Huget (Sarnia):** I certainly will.

**The Chair:** But it's entirely up to you.

**Mr Huget:** I'll save some time for Mr Hayes. I guess in the interests of spurring along a lively debate, I should ask which one of you makes the best vehicle, but I won't do that. The purpose of the act in a lot of cases is to modernize and update the Labour Relations Act. I want to touch on a specific issue that you raised, and that is the one of security guards and a perceived conflict of interest. In every other province in Canada, including the federal jurisdiction, security guards are allowed to join the union of their choice. In Ontario, under the amendments, there is indeed even a provision that if there is a perceived conflict of interest as determined by the board, there is the opportunity to have a separate bargaining unit.

My question to you—and I'll defer to Mr Hayes after that—is, what makes Ontario security guards different from every other province in Canada? Why would they be in conflict and the rest of the country not?

**Mr Cooper:** At least from our perspective, I would have to say that they're unique in our circumstances, because the vast majority of our facilities are in this province and we don't have this issue to deal with elsewhere. We have a good relationship with this group in this province at this point and would like to continue it.

**Mr Huget:** Do you have facilities in Quebec, sir?

**Mr MacLean:** We have small facilities but they are not represented in that sense with respect to security.

**Mr Cooper:** I think having it in a separate bargaining unit or another local of the same union doesn't resolve the obvious conflict of interest to me.

**Mr Huget:** I'm just a little confused as to why Ontario workers would be in conflict and they're not deemed to be in conflict anywhere else in the country. I'm just trying to make a distinction as to what makes our security guards different from every other group of security guards in the country in terms of conflict of interest.

**Mr MacLean:** I guess the thing that surprises me, at least from our perspective—certainly the union that represents our guards is opposed to the changes, so you'd probably better ask them.

**Mr Huget:** I ask everybody. Pass to Mr Hayes.

**The Chair:** He left you 45 seconds.

**Mr Pat Hayes (Essex-Kent):** Forty-five seconds, oh my gosh.

I worked at Ford so I know what the best cars are.

**Mr MacLean:** The answer's no, Pat.

**Mr Hayes:** The answer is no. I have negotiated with Max. Max is never—you don't have to negotiate this stuff. But it's not in the contract when you ask him for it.

I think it has proven in the Big Three that the relationship with the CAW here—sure there might have been some struggles over the years, but you have a very good relationship. Especially with health and safety, for example, supervision and the workers themselves jointly work together on training programs and such. I guess you have proven that there are decisions made to expand here in Canada because of that workforce and because of strong union leadership and cooperation.

1030

I guess what puzzles me is this: You do have this kind of cooperation and it has been successful. So what is the reason that other employers you even deal with, and the workers, should not have the chance to have that same kind of relationship? In other words, what I'm saying here is that it was proven in the Big Three that management and the union can work together, and yet this legislation is making it a little easier for workers to become organized and have the same kinds of benefits and wages.

**Mr MacLean:** If I may respond first, I'll reference two things you said. We have had some struggles, I believe was your context, and yes we have. We've been in the business with the CAW and the UAW for 50 years, and it's taken us a very long time to develop the kinds of relationships we have today.

You also mentioned health and safety. I would argue that our reputation in Canada in that arena, with our principles, is not the best. We do have a lot of good things going in terms of joint programs and so on, but we also have an awful lot of problems, relative to the abuse, that a company has the right to refuse.

**The Chair:** I want to thank you for appearing today on behalf of General Motors, the Ford Motor Co and Chrysler Canada. We appreciate your participation. Take care.

## MAYORS OF THE GREATER TORONTO AREA

**The Chair:** the next participant is spokesperson Mayor Hazel McCallion from the city of Mississauga. We've got your written submission and it's been distributed. It will be made an exhibit and will form part of the record. Please go ahead, your worship.

**Mrs Hazel McCallion:** Good morning, Mr Chair. Thank you for the opportunity. This morning I'm representing the mayors of the greater Toronto area. We have been meeting now for three months on the economic recovery of the GTA, which we feel is a very major part of the province, and we're concerned about the economic situation that exists in our area.

There's considerable concern expressed in the municipal sector, and I'm sure many organizations have been here on this since the release of the discussion paper.

First of all is the effect on the economy. We're all very concerned about the unemployment and about welfare rolls bursting at the seams, and we're just not in with free trade and all the impact. There are advantages to free trade, but the disadvantages. It's all come to making a crisis situation in our area, so we welcome the opportunity to discuss this legislation with you.

We do not necessarily disagree with your objectives. They do not justify, though, the inevitable consequences. Proposed changes to the legislation are expected to result in major changes in collective bargaining, relationships and union organizing activity. By increasing the scope and power of unions, municipalities and business will be further constrained and unable to meet economic challenges.

A recent survey—and I'm sure it's been mentioned to you a number of times—says that Ontario stands to lose approximately 295,000 jobs and \$8.8 billion in investment over the next five years if proposed changes are implemented. This translates into a loss of provincial taxes of at least \$2.5 billion and approximately \$500 million in municipal taxes, and you know that at the present time we're scratching to keep our heads above water in the municipalities.

Ontario has already lost 400,000 permanent jobs as the result of the current recession. Personal business bankruptcies are at a record high and the unemployment rate is over 11%. Clearly, we cannot afford another economic setback in this province. Also, the unity question has certainly discouraged global investment in Canada as well as Ontario.

We want to deal with two issues, with the economic issue, and then we want to deal with how this affects municipalities providing services to the citizens of Ontario.

The mandate of economic development professionals in GTA municipalities is the attraction and retention of commercial and industrial business from around the world. This is the area the global investors look to.

Negative impact of the proposed legislation is already being felt in local economic development efforts and initiatives. At our meeting on Friday, there were mayors who indicated—one mayor has gone to Italy to attract investment. The question of the proposed labour legislation was certainly raised, and also the Pacific Rim.

Increased collective agreement powers as proposed in Bill 40 bring the issue of business climate and labour stability

to the fore, a clear message from the business community that these increased powers for unions in collective bargaining relationships will put them at a serious disadvantage to compete globally.

The proposed legislation will remove any incentive to locate or expand a business in this province—and business has spoken out on this to the province; they are speaking out to us in the local municipalities—and will lead to layoffs and business closures in the long term and prolonged vacancies in commercial and industrial properties.

Right at the present time, 25% of our industrial capacity in Mississauga is vacant. Losses in industrial and commercial tax revenue will place a higher burden on residential taxpayers, a burden many residential taxpayers will not be in a position to support. That's the economic issue. Globally, an expansion within our municipalities, in our opinion, will be very seriously affected.

Let's go to the municipal services' concerns. The significance of this legislation on municipalities' ability to provide public services is somewhat more complex. The relationship between a municipality and its residents is unique. Unlike the private sector, residents have paid for an existing level of service through taxation and are unable to source an alternative supplier like they can in the private sector. These services are in the public realm because they are necessary, and would not be viable or practical if left to the private sector.

The most significant implication for municipalities is the ban on use of replacement workers. In the event of a strike, residents will be denied services they have already paid for through their taxes—not that they're going out to buy it; they've already paid for it and they're not getting it.

The proposed legislation allows for the use of specified replacement workers to the extent necessary to prevent danger to life, health or safety.

Expected complications relating to interpretation and delay in response to emergency situations: In the event of a strike, municipalities are required to use bargaining unit employees if the trade union gives consent and if employees are willing and able to do the work. In an emergency situation, delay caused by disagreements on these matters between municipality and union could result in serious implications in life-threatening situations.

The primary intent of the municipality is to prevent the occurrence of danger and total disruption by use of ongoing preventive maintenance and monitoring. We must be able to respond quickly to any problem that occurs. If we don't, we sure hear about it, because they say: "We've paid for that service. We've paid for that response and you're not providing it." It's not a case of going out and buying it.

Municipalities will be in constant conflict with unions over what constitutes grounds for use of replacement workers. Contracting out will become a viable alternative in order to protect citizens.

A very important concern is liability to the municipality if essential services are not maintained during a strike. For instance, a flood: We say, "Well, sorry, we're just into a discussion now as to who's going to go and plug the broken watermain." Or a spill of dangerous goods into our storm drainage: "Well, I'm sorry, we really don't know yet



how we're going to deal with it. We're into discussion." I can assure you, that would be a very interesting experience to have.

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Even during normal operations, a municipality may encounter lawsuits alleging negligence in the maintenance of its infrastructures. Let us give you a very simple example: Missing stop sign not replaced promptly; fatal accident occurs; municipality held liable. We didn't get out and replace it because we're discussing. Who's going to do it? The people are on strike. Will the non-union people agree to do it? If they don't agree, we have nothing. Do we go out and hire somebody to do it? We can't.

I think we have to get down to basics, very, very basic. Since the municipality's the only provider of such services and the services are necessary, there is no competition to keep prices and wages in check. We're not into competition. Unions will be hard pressed not to use new-found powers to push for unreasonable wage and benefit settlements—there's no question about it—which will translate into unrealistic tax increases for municipal taxpayers. In the absence of economic pressures, the only control mechanism is the tolerance level of the taxpayer, and the tolerance level of the taxpayer today, we know at the local level, is zero, nothing less or more.

I think the 1,000 people who attended a meeting in Toronto last night are an example that the taxpayers are fed up with politicians, they're fed up with government and they're not going to tolerate it any more. That's the message we're getting at the local level, and I'll be very surprised if you're not getting it at the provincial level.

On behalf of the mayors of the greater Toronto area, we request the province to defer the proposed changes. Set up a municipal-provincial task force to address our particular municipal concerns, which we do not feel have been addressed or recognized. It's been directed more, in our opinion, to the private sector.

The task force should deal with the restriction on the use of replacement workers, which will impact the ability of the municipality to deliver services during strikes, the negative perception that proposed changes will discourage economic development, when the economy is already extremely weak, expansions within the province and international investors' comments regarding the uncertainty of the Ontario labour climate. I don't believe that the global investors have even taken the time to analyse or to read the proposed labour legislation. They just say, "We're leery of it, we just don't want to gamble and therefore we'll stay away from the province of Ontario."

There are more details in our presentation, but we seriously say to you that the province, in making these proposed labour legislation changes, is not aware of the implications on providing the services to the citizens of our province that they have paid for in the local taxes, and we can't provide something we've already levied them for. That's quite different to going out and buying toilet paper, because if you can't get it from one company, you can get it from another company. We have no choice. We ask you to defer the legislation and set up a task force to deal very specially with the municipalities' concerns.

We believe that this proposed labour legislation is affecting our economic development. We heard from all the economic development officers—they were together—and the economic development officers of the greater Toronto area are going to work with the greater Toronto area minister, Ruth Grier, to see how we can turn around the economic situation in the GTA. We're in deep trouble as far as attracting industry is concerned. When you know the vacancy in commercial buildings in Toronto and the surrounding area and the vacancy in industrial buildings, I can assure you, we don't see any bright light on the horizon.

In our opinion, to sum it up, what a time to bring in the proposed labour legislation. I'm not saying it's unnecessary, but what a time to bring it in, when we're knee-deep into a recession, knee-deep into competition second to none for investment throughout the world. Here we are, doing something that is limiting our ability to compete.

Mr Chair, that's our presentation. We hope the province will realize that this labour legislation has a very serious impact on the municipalities of this province.

**The Chair:** Thank you kindly. Five minutes per caucus.

**Mrs Witmer:** Thank you very much, Mayor McCallion, for your presentation. I'm pleased you've had an opportunity to provide the unique perspective of the municipality. I think that perspective has been totally overlooked in this entire discussion on Bill 40.

Would you just summarize for us what it is that you are suggesting the government do at the present time as far as the municipal sector is involved?

**Mrs McCallion:** Very concisely, we would like the proposed labour legislation deferred and a task force set up to deal with our specific concerns, which in our opinion are in no way dealt with in the proposed labour legislation. I don't think the impact on municipalities has been realized by the province in bringing forth this proposed labour legislation, and we would like an opportunity as municipalities.

AMO has taken the same position: defer it, set up a task force and let's sit down and see, very clearly, how we can deal with the very serious implications this is going to have on providing needed services to the people of Ontario. They can't go and buy from somebody else. They not only buy it from us, they've paid for it; they've paid for a service they are not going to get.

**Mrs Margaret Marland (Mississauga South):** Madam Mayor, you're speaking on behalf of AMO and the GTA mayors, and I know you've done something very exceptional in that you've had meetings in Mississauga of all the GTA mayors, which hasn't been done in any other formal format before.

When the GTA mayors, as you say, represent 4 million people, almost half the people in this province, when you meet and talk about emergency services—which is, from your presentation this morning, very clearly outlined—have you looked at directly requesting the province, at least in the interim, if it won't defer it, to declare municipal services an essential service? I'm thinking about 1979, with our famous derailment in Mississauga. Where would



we be today with a derailment like the one we had in 1979 if we had a situation of a flood or a spill?

Also, I know you're a hydro commissioner. I know the provision of electricity isn't a matter just of light and heat; it's water and sanitary sewers and pumps working for all of those. They're not luxury services, they're not a matter of whether a factory operates or not initially; it's a matter of survival, of the health of the people you represent. There would be a potential, would there not, for a tremendous crisis at the local level if we didn't have access to electricity in terms of protecting the health of people with the supply of water and sanitary sewers? I'm just wondering whether AMO or your GTA mayors have looked at declaring some of these services an essential services, regardless of Bill 40.

**Mrs McCallion:** We'll certainly have to look at it. The Municipal Electric Association has put in a very detailed presentation. We didn't cover hydro, but we certainly support the MEA's position. This is very serious if the hydro goes out. We get complaints now that it affects businesses in their operation, for one thing, but when it starts to affect the services—I think Florida will tell you what it is to be without hydro for a while.

I guess we're hoping that if they don't defer the bill, they will defer it in regard to the municipalities, because we see absolutely nothing that indicates they dealt with how this proposed labour legislation would affect municipalities and the provision of essential services to the citizens of Ontario.

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**Mr Randy R. Hope (Chatham-Kent):** Good morning, your worship. How are you this morning?

**Mrs McCallion:** Good morning.

**Mr Hope:** I want to focus on the first part of your presentation. You talked about the Ernst and Young study and about offshore investment. You've made reference to the study, and I wanted some of your views. I wonder how many jobs have been lost because of the business community's campaign against the legislation, airing what its perception is of this legislation, which is discouraging investment. I wonder how many jobs we've lost because of that campaign, which is making it very difficult for your economic development officers to promote Ontario as a good place to do business.

And I'm wondering about the impact, especially in Mississauga, of the free trade agreement, because I know in my own riding we're being devastated. Most of it is American-based corporations restructuring themselves and moving to the United States on lower wages.

We're talking about your taxpayers, and I'd really like to focus on that aspect. You talk about the loss of jobs, the bankruptcies; we know a lot of the banks are going in and serving notice on some of the small parts manufacturers without notification. But I'd like to talk about the taxpayers themselves, who have been possibly victims of plant closures without any justification for a plant closure, which also affects your tax base. I don't see any reference, within the economic climate, because you made reference to the free trade agreement and now the possible Mexico-

US-Canada free trade agreement, and nothing being done to bring investment into this country by stopping the off-shore producer—I'm just wondering why there isn't anything in your presentation, representing the GTA, about making businesses more accountable to the taxpayers you represent, about making sure that justification is served when a plant is closed.

**Mrs McCallion:** You've done a beautiful job of summing up the problems we're all in. This proposed labour legislation is just another kick at it. I agree with you that some of the publicity that has gone out that has said that jobs are being lost because of the proposed legislation is not helpful to us. We don't disagree with that at all. We've got so many problems that we're frustrated with all the problems we have: free trade, manufacturing going to the States. Now, we're gaining some in Mississauga; we keep a very close watch on this and we are making some gains, but we're still losing.

So we have free trade, and I believe your party—I assume you're NDP—is as concerned about this as we are, no question about it. That's exactly what we're trying to get across to you. We've got so many problems, why add another one? We're now going to be dealing with free trade with Mexico, where their wages are very much lower.

We're concerned about the rising welfare rolls; last year, \$85 million in the region of Peel. Unemployment is at 11% in this area. I mean, gracious. So what we do is, when we're down, give another kick.

**Mr Hope:** But your worship, isn't the labour law like speed limit signs? As long as you don't go over the speed limit, you don't have to worry about getting a ticket, but if you go five, 10, 15, eventually you're going to get a ticket. As you break the law, you eventually pay for it. Isn't it true that if you treat your workers with respect and dignity, this law won't even need to be looked at because you won't have to worry about a trade union coming into the workplace?

**Mrs McCallion:** Sir, if the product is too highly priced, you can't sell it, so the worker can't make it. It's as simple as that. If you can't sell your product, there are no workers.

**The Chair:** We speed along to Ms Murdock.

**Ms Sharon Murdock (Sudbury):** Much of your presentation dealt with the possibility of an emergency situation or not being able to get work done. I notice at the very end, in the recommendations, you refer to subsection 73.2(2), which wouldn't really address your concern, but subsection (3), in conjunction with subsection (15), would directly address your concern. I'm wondering whether your intention would be to use that, because on page 14 you say—

**The Chair:** Perhaps you can give her a chance to answer that. Go ahead, ma'am.

**Mrs McCallion:** On that basis, Mr Chair, it's interpretation. The legislation opens the door to say, "These things can happen." It opens the door, but it doesn't close the door. And the point is, let's separate municipalities from a company.

**Ms Murdock:** I understand the distinction.

**Mrs McCallion:** I worked for the private sector and I know how you can deal with it. I'm talking about municipal services, and we are limited. We can't take time to sit down to figure out how we're going to stop that broken watermain. We can't take time to sit down and decide how we're going to put a stop sign up. We can't take time for that. It's got to be done immediately. And liability on the municipalities—we've talked to our insurance people. It's going to go up, I've got to tell you.

**The Chair:** Thank you. Mr Offer, go ahead, please.

**Mr Offer:** Good morning, Madam Mayor. There are two areas I'd like to address with you this morning. One is the call you have made of the need for an impact study as to how this legislation will affect municipalities. I can tell you, though, that there has been that call from a variety of other sources, primarily the business community, and to date the government has not conducted any impact study. They continue to work on the basis that it is impossible to conduct such an impact study.

For your information, as has already been indicated, we have heard concerns from the local municipal services: How are they going to repair a spotlight if there's a work stoppage? How are school boards going to operate if there happens to be a strike where there are bus drivers? The children's aid societies are concerned about how they are going to deal with children if there's a work stoppage.

So the examples which you bring forward today are extremely important, especially on page 11, when you talk about real life. We're talking about what really goes on in the municipality: How to repair a sign, what to do with water supply, garbage collection, the public library.

You call for an impact study. I take it that you see no difficulty in there being able to be conducted such a study for municipalities in light of Bill 40.

**Mrs McCallion:** No, I see no problem at all, and we feel very strongly that it's absolutely essential.

The proposed labour legislation applies to the private sector and the municipal sector. There is a major difference between two, and the proposed labour legislation has not recognized it at all. They talk about safety and health, it is true, but interpretations—we had a labour lawyer in front of us to go over this. I can assure you that he outlined to us some very serious implications that we've got to be concerned about. Sure, there's wording in the legislation that says for motherhood statements, public safety and health—there's a cost factor and then the liability associated with it that we're very concerned about, and we would like that dealt with. We're not saying don't change it, but please let us have the opportunity to explain to the government our position as municipalities, which is quite different from the private sector.

We're concerned about the economy, and we mentioned that. Talk to the mayors who have gone to the Pacific Rim and to Europe trying to attract investment into their municipalities. Talk to them. They'll tell you.

**Mr Offer:** Even on that point, I was listening to the question of Ms Murdock to you, and she alluded to the bill, where there can be an agreement. Your point is made.

The fact is, how is it that municipalities are going to be able in any way to predict what's going to happen two and three months down the line? How are they going to predict under this legislation how many people are going to be needed to repair a stop sign? How many people are going to be needed to person this library service? How many people are going to be needed to maintain parks and recreation services? It's impossible.

**The Chair:** Perhaps Mayor McCallion can respond to that. Go ahead, ma'am.

**Mrs McCallion:** I say I think he's expressed it.

**The Chair:** You agree.

**Mrs McCallion:** How do we determine it?

**The Chair:** At that, your worship, we say thank you to you, ma'am, for appearing here on behalf of the GTA communities.

**Mrs McCallion:** Mr Chairman, I take exception to that. Please, I beg you, as a mayor—I'll tell you, they don't call their member of Parliament when there's a broken watermain or a stop sign missing or the hydro's turned off; they call the mayor and members of council. We are accountable.

**The Chair:** Quite right.

**Mrs McCallion:** I beg you to recognize this as you deal with this proposed labour legislation. Don't put your heads in the sand. If you want to deal with the private sector, deal with it.

**The Chair:** Thank you kindly for being here this morning and for participating in this process. You've represented the views of the GTA communities effectively. Take care.

**Mrs McCallion:** All MPPs should be mayors before they become MPPs.

Interjections.

**Mrs McCallion:** You agree with us.

**Interjection:** We do.

**The Chair:** Or at least city councillors.

**Mrs McCallion:** I'm not sure about city councillors. You better be a mayor; then you get a call.

**The Chair:** You'll get my mayor all upset if he starts thinking about that.

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#### GROCERY PRODUCTS MANUFACTURERS OF CANADA

**The Chair:** The next participant is the Grocery Products Manufacturers of Canada. Would they please come forward and have a seat. Here we are in disarray. Anarchy reigns in the committee room. Please seat yourselves in front of a microphone, tell us your names, your titles, if any, and carry on with your submission. Your written material is being distributed and will form part of the record by virtue of being made an exhibit. Please go ahead because we only have 30 minutes.

**Ms Kathryn Rowan:** Good morning, everyone. My name is Kathryn Rowan. I'm with the Grocery Products Manufacturers of Canada. Joining me today for the formal part of the presentation is Mike Krueger, who is with



Colgate-Palmolive. He's vice-president of human resources. Also joining me for the question and answer period of this presentation are Louise Binder, vice-president of human resources with Lily Cups, and Bill Frakes, vice-president of human resources with Unilever Canada.

GPMC appreciates this opportunity to present its views on the proposed changes to the Ontario Labour Relations Act. The views we will present today are shared by other food industry associations, including the Bakery Council of Canada and the Ontario Food Processors Association. It will not surprise you to hear that our organization and its members oppose the proposed amendments for many of the same reasons you have heard from other business groups. However, we want to outline for you the unique position our industry occupies in the Ontario economy and emphasize the far-reaching consequences if these proposed amendments become law and further erode our competitive position.

First, I'm going to describe the environment in which our members currently operate. We feel it's important for you to see the linkages between our industry and other segments of the Ontario economy. Second, Mike Krueger will review the proposed amendments which our members feel their businesses cannot withstand. In closing, he'll provide you with recommendations which we feel at a minimum must be implemented if our industry is to be competitive and add value to the Ontario economy.

GPMC is the national association representing 165 companies which manufacture and market nationally branded food, non-alcoholic beverages and other consumer products which are generally available at grocery stores and food service outlets.

Our members' activities play a significant role in the economy, particularly in Ontario. Across Canada our members purchase \$12 billion in agricultural products every year. We account for almost 10% of the gross domestic product. Although our products are distributed across Canada, 50% of food, beverage and non-food grocery products manufacturing is concentrated here in Ontario. In this province, food and beverage manufacturers alone employ roughly 90,000 people and are a major source of income for Ontario farmers. Member purchases also support core industries, including producers of steel, paper and other packaging materials, and service industries such as trucking, warehousing and the advertising community.

The industry is one which is in the midst of dramatic change. Global competition, freer trade, changing consumer demands, agrifood policies and the environment are just some of the issues which are transforming our industry; and because the agrifood industry in Canada was traditionally well protected, the adjustments we are making are especially difficult.

Furthermore, about three quarters of our members have plants in both Canada and the United States. As tariff barriers fall, these companies have the option of producing on either side of the border.

It's not a decision which can be easily avoided or attacked as an ill effect of foreign ownership. A company which continues to manufacture at a higher cost in Canada will soon have no market for its goods because retailers,

under consumer pressure of their own, will strive to acquire inventory at the least possible cost. Our retail customers also have options. Many have indicated to us that if they can't purchase products in Canada at competitive prices they will go elsewhere, and they're doing so.

Both manufacturers and retailers in Canada are handicapped by higher costs for dairy and poultry products. Dairy ingredients, for instance, cost Canadian processors much more than US processors. Skim milk powder costs about 20% more and cheese costs 25% to 30% more. Further, processors of poultry products in Canada may pay from 30% to 60% more for boneless chicken parts compared with similar processors in the United States. This alone can account for roughly 40% of the finished product cost.

We are also at a disadvantage from a productivity standpoint. Last fall, GPMC undertook a comparative analysis of wage and benefit costs in similar plants in Canada and the US. For the average Canadian food manufacturer, the per-unit wage and benefit costs can be from 225% to 858% higher than in the US.

You're probably wondering what this has to do with labour law reform, since agrifood policies and free trade agreements are, after all, largely federal government matters. As I mentioned to you earlier, it's vital to understand the environment into which you are introducing yet another element which erodes our industry's ability to compete.

Frankly, it's not the time for this type of reform. Business in Ontario is reeling from the effects of the recession, and its ability to compete has been further battered by increased direct and indirect taxation such as the previous government's OHIP payroll tax and recently increased personal income taxes, by the federal government's increase in UIC contributions, by the possibility of further environmental legislation and by the costs on business and the taxpayer, imposed by a whole range of programs including pay and employment equity and higher minimum wages. Any one of these measures may appear to have sound social merit. Collectively and cumulatively, these programs have tremendous adverse economic consequences for business.

Put as directly as possible, these reforms on top of all these other measures will have a devastating effect. They make the province a less attractive location for capital investment. Capital investment is the lifeblood in business. We are not talking about lowering wages; we are talking about creating an environment in which we cannot just survive, but where measures introduced encourage investor confidence and capital so that quality jobs can be retained and expanded.

In all this North American rationalization that was alluded to earlier, we should be mindful of the excess capacity that already exists in the United States. I point to recent US history as an example, when thousands of jobs moved out of the high-priced northeast to the lower-cost Sunbelt states. A similar migration has begun from Ontario. If it continues, it will not only jeopardize our own industry and its workers, but also deprive Ontario farmers and agricultural workers of their major source of income.

Generally, business executives will not give these as the reasons a company is relocating or not expanding. However, you will hear that large companies are rethinking their investment activities.

The goal of this government must be to create an environment which welcomes investment that will allow us to produce goods more effectively and compete in the global market so that we can sustain jobs in the industry and throughout the economy.

I'd now like to turn the floor over to Mike Krueger.

**Mr Mike Krueger:** Thank you, Kathryn. Before detailing the amendments which we hope this committee will recommend, let me mention that our members, through GPMC, are working in a positive effort to ensure that our agrifood industry remains healthy.

One of our important initiatives is the Canadian Grocery Producers Forum, which we established last year with the United Food and Commercial Workers International Union. UFCW is Canada's largest private-sector union, representing some 175,000 workers, many of them in our members' plants.

Working cooperatively, the UFCW and GPMC are developing a vision document for the future of our industry. We also have established committees which are examining issues of competitiveness, training and adjustment and the environment. We believe we must build on relationships like this if we are serious about improving labour-management relations in this province.

We have undertaken these initiatives because we both recognize the need for a new partnership between labour and management, exactly the kind of partnership these labour law reforms purport to encourage but, quite frankly, do not address. Instead, we believe that they arbitrarily distort the balance of power which must exist for fruitful negotiations, and they will without a doubt lead to an increase in confrontation between organized labour and management.

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GPMC and the UFCW were among the first groups to meet and discuss our concerns with this bill. While we were unable to come to a common position and we've agreed to disagree on this one issue, the discussion gave us a better understanding of the other's position.

The process has not hindered our partnership in the Canadian Grocery Products Forum. We continue to recognize that it will take cooperation and compromise to ensure that we preserve our industry for the future. We had no option but to take labour reform off the table if we were to continue to discuss issues of mutual concern. At an individual level, however, companies don't have the luxury of putting aside labour relations issues. They must deal with them.

Turning now to the specific provisions of the labour law reform before this committee, I want to list briefly the provisions which are of greatest concern to our members. GPMC membership includes companies, by the way, with both union and non-unionized workforces. Approximately 41% of our total workforce consists of hourly paid, unionized employees.

There are many aspects of these amendments which concern our members. Among the most pressing are, and not necessarily in order of priority, making the purpose clause a substantive part of the legislation; provisions dealing with organizing activities, certification and automatic first collective bargaining arbitration; OLRB determination of bargaining units; access to third-party property; provisions covering services which are contracted out and, lastly, the right to continue operating during legal strikes.

Although we believe the changes must occur to all of these proposed amendments, there are three in particular which we believe can and must be addressed, because they have the greatest impact on our members. The three specific aspects of the proposed amendments to which we are recommending changes are the purpose clause, provisions relating to the certification process and employers' right to continue operations during a work stoppage.

Including a purpose clause in the body of legislation is virtually without precedent. While we can accept it as a statement of principle, we believe making it a substantive part of the legislation, subject to OLRB and perhaps judicial interpretation, represents an unwarranted infringement on the collective bargaining process. Making it mandatory that collective bargaining "improve terms and conditions of employment" ignores the economic realities which force companies in times such as these to maintain the status quo or even seek concessions from all stakeholders.

We believe this clause will force a company struggling for survival to choose between being accused of bad-faith bargaining or simply shutting down for ever because it cannot table an offer which contains improvements. We recommend, therefore, that the purpose clause be removed from the substantive portion of the bill and treated as is traditional for such clauses.

In any case, we believe there is a serious legal question as to whether there is a requirement for this amendment, given section 8 of the Ontario Interpretation Act, which reads, "The preamble of an act shall be deemed a part thereof and is intended to assist in explaining the purport and the object of the act."

Many of our members express concerns related to amendments dealing with the organization process, certification and automatic first collective bargaining arbitration. Taken together, we believe these provisions reduce a union's incentive to bargain in good faith for a first contract. It is obvious too that the rights of an individual who wishes not to be represented by a union will now be eliminated.

However, our recommendation concerning this section is the addition of a requirement that ratification votes be by a supervised secret ballot, the most powerful tool in a democracy and the one which can ensure that the true wishes of employees are accurately measured.

The provision which has attracted most public attention is that which effectively prohibits companies from continuing to operate in the event of a strike. This provision destroys the axiom on which labour relations has been founded: that workers have the right to withdraw their services and the companies have the right to continue production.



It is the hope of this legislation's sponsors to create an environment where companies will so fear strikes that they will grant virtually any union demand to avoid a work stoppage. They should examine the Quebec experience. According to statistics quoted by the Human Resources Professionals Association of Ontario, since anti-replacement legislation was enacted in Quebec in 1976, that province has accounted for 36% of Canada's striking employees, compared with Ontario's 24%. From 1986 to 1991 inclusive, Quebec had more than twice as many workers involved in strikes as did Ontario, and averaged 224 strikes per year compared with 193 in this province. Copying Quebec's labour legislation is not going to bring about industrial peace and cooperation, one of the stated aims of these reforms.

By way of amendment, we urge the committee at the very least to ease restrictions on the use of replacement workers so that management from other locations may be used to continue operations. Modifying these amendments as we have proposed will restore some of the balance in economic power which is necessary for true and meaningful negotiations.

To recap, three main points which our members believe must be addressed are as follows:

1. Remove the purpose clause from the substantive part of the act.
2. Ensure that ratification votes be by a supervised secret ballot.
3. Ease restrictions on the use of replacement workers so that management from other locations may work to continue operations. Workers at the struck location who are not part of the bargaining unit should be allowed to work.

In closing, I would remind the committee that the grocery products manufacturing industry holds a unique place in Ontario's economy and that our industry is already struggling with a very difficult environment. We cannot afford more shocks to the system, and losses in this sector will rebound up and down the whole agri-food chain. While our members have many concerns with this proposed legislation, we have focused our attention on three specific areas which are the most crucial to our continued survival as a vital part of the Ontario economy.

We urge the minister and the government to seriously consider these proposals in light of the damage that could be done to our economy if these provisions are enacted. Without a strong economy and the companies capable of competing in the global market, there will be fewer jobs to organize and it would be a hollow victory indeed for organized labour.

Therefore, on behalf of our own member companies, the workers we employ, the agricultural sector we support and the myriad of suppliers from whom we purchase goods and services, we ask that these amendments be reconsidered and redrafted to maintain the present balance in labour-management relationships in Ontario.

**The Chair:** Thank you. Three minutes per caucus.

**Mr Len Wood (Cochrane North):** Thank you very much for coming forward with your presentations. I notice

on page 6 that one of your recommendations in your conclusion is the easing up of replacement workers. I don't believe personally that people should have to pay with their lives or serious injuries as a result of replacement workers being brought on.

There is an example in my own riding of what can happen: There's a monument set up where when replacement workers were being used and they got into a battle. People brought out their hunting rifles and after the dust settled there were 11 people on the ground. Three of them were dead and eight ended up in the hospital until they recovered.

When you talk about replacement workers—when somebody is on strike and losing their chance of livelihood in the future, emotions get very high. This is just an example of what has happened in the recent past in my riding in Reesor and I just wanted to know your feeling, if there is a way of stopping conflicts of this kind which end up in people being killed and maimed for life. Do you have any comments on that?

**Mr Krueger:** Yes, I do.

**Mr Wood:** It does happen.

**Mr Krueger:** Let me address that in a little different light. You're talking about one situation—one which I'm not aware of evidently, which is very serious just by the nature of the way you described it. Of all labour relations, 99.9% are resolved in a satisfactory manner. The other small percentage where there are strikes—I have never heard of any one being shot and killed—three people being killed—at least not in Ontario. It may have happened.

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**Mr Wood:** There's a monument at Highway 11 right at Reesor siding.

**Mr Krueger:** When did this happen?

**Mr Wood:** That happened just about 25 years ago, I guess.

**Mr Krueger:** Twenty-five years ago, all right. So what you're saying is some people, and you're saying they were strikers, took the law into their own hands and literally committed murder against some people who were trying to earn a living doing a job. Now, that is unlawful, and I don't know how else to answer that.

**Mr Wood:** Well, it's an incident—and I don't want to go any further—where something does happen that the use of replacement workers can get very serious.

But we'll get back into one of the reasons why the bill was brought forward: the major changes in the workplace and changes in the work habits, more women in the workforce, more minority groups. I'm wondering if you agree with me that since the amendments were brought in—the last amendments were made in 1975—there has been a dramatic change in the workforce.

The Toronto Star this morning gave an example that since free trade was brought in, there's an example of one person who has to work three part-time jobs of less than 20 hours a week to make a living. I'm just wondering what your feeling is. Do you see in the service sector and the areas of this kind that the workplace and the workforce

have changed drastically since 1975 when previous amendments were made?

**Mr Bill Frakes:** Yes, there is change in the workforce. We see that because we live with it every day, and part of what we look at is the necessity for us to have the flexibility to adjust to that. Part of the difficulty with the proposed legislation is that it would restrict our flexibility in dealing with a workforce in a global economy. Just as the workforce within Canada is changing, you must recognize that our competition is changing at the same time.

You referred earlier to strike violence, and I'd like to comment on that. Obviously, there is no company that would condone such activity. The difficulty with the proposed legislation is that it would increase the possibility of such violence, the reason being that you are throwing off the balance that exists today between organized labour and business.

When you do go into negotiations, the incentive now would be for the union, because the balance has shifted, to be more prone to strike, knowing that the company would be placed in a position where it could not replace, it could not operate. That balance exists today very nicely. When we go into negotiations, we know we have to settle and we want to settle. Obviously, the best approach is not to get into a strike situation.

**Mr Offer:** Mr McGuinty has a question. Just prior to that, just by comment, I noticed that Mr Wood, in his question, referred to the fact that there have been no changes made to the Labour Relations Act since 1975, or however you want to do it. We all know that's just a perpetuation of a myth. There have been many changes to the Labour Relations Act, almost on a yearly basis. Tell the truth, in other words.

**Mr McGuinty:** I would take issue with the words spoken by my colleagues opposite. The issue of violence on the picket line and that being used as a justification for not using replacement workers is, to me, a red herring. It's a bit of smoke. The statistics provided by the Ministry of Labour show that in recent history there is very little violence on the picket line. Furthermore, we have in place and we have always had in place laws prohibiting violence, prohibiting intimidation, prohibiting harassment, and they are all found within the Criminal Code. If there's a problem, it's been in the absence of proper enforcement of that law.

What I want to deal with, however, is the issue of a secret ballot. We've been told countless times by representatives of labour that we are naïve in the extreme to believe that it is somehow possible to conduct a secret ballot within the context of an organizing drive in the workplace, in that employers are bound to somehow exert some kind of undue influence, somehow act inappropriately, and that it's simply impossible to create some kind of atmosphere where fairness will prevail. I'd like you to respond to that, please.

**Mr Krueger:** There are presently many jurisdictions in which secret ballots are held, not only in the labour relations area but any type of elections you have. There's no difference between the type of secret ballot that would

be held in a labour relations forum as would be held in a public election, and fairness is ensured by the provincial government officials holding that vote. British Columbia is one of the best examples I can think of, in which there are many supervised secret votes, votes held by the government, and there's no undue influence exerted by anyone. It is a government-supervised vote.

**Mrs Witmer:** I thank you very much for your excellent presentation. What you've certainly brought here today is a unique perspective from the grocery product manufacturers. I think we have an indication that Bill 40 wants to apply to all sectors in the Ontario economy, and that's simply not possible. You've certainly indicated the severe impact it could have on your industry if it were put forward as proposed.

I'm pleased to see your support for the supervised secret ballot vote. I put out a private member's bill in November 1991 on that very issue. There seems to be a consensus, at least among the management groups and many individuals in this province who are looking for that type of protection, that type of fairness and the opportunity to freely express their opinion as to whether or not to join a union. So I'm pleased to see that.

Your greatest concern is the replacement worker section. If the government does not make the change you're proposing, which would allow management from other locations to come in and continue your operations, what type of consequences will there be for your industry?

**Ms Louise Binder:** Our greatest concern is that the balance between labour and management at the bargaining table will be so eroded from the management perspective that in fact we will not be able to do anything but accede to all the requests of labour at the bargaining table. We will not have the opportunity to withstand a strike in any fashion whatsoever. So we will be completely left without any protection at all at the bargaining table.

**Ms Rowan:** If I could also add a comment, you heard earlier from the auto manufacturers who talked about just-in-time delivery etc. We face a similar situation, particularly in the food and beverage sector, in terms of spoilage. So the costs that accrue to a company in that sector alone are significant.

**Mr David Turnbull (York Mills):** My question is with respect to the purpose clause. You've got an excellent brief and the thing that jumps out at me is the fact that you're saying that the purpose clause is virtually without precedent in legislation. I'm very concerned that we are forcing the OLRB to become an advocate for unions as opposed to being a neutral body. Could you comment on that, expand on it?

**Ms Binder:** The point we're making about the purpose clause is not that the existence of a purpose clause is without precedent, but that the inclusion of it as a substantive part of the legislation is almost without precedent. In fact, the point we're also making is that we're not even certain whether there's any requirement for so doing. The purpose of a purpose clause is well explained in the Interpretation Act.



**The Chair:** I want to say thank you to the Grocery Products Manufacturers of Canada. We appreciate your coming here this morning. You've made a valuable contribution to this process. We're grateful.

1130

#### ASSOCIATION OF PROFESSIONAL ENGINEERS OF ONTARIO

**The Chair:** The next participant is the Association of Professional Engineers of Ontario. Would they please come forward, have a seat and tell us their names or titles, if any, and commence with their submissions. Please try to save the last half of the half-hour for exchanges and dialogue. Your written material is being distributed. That will be made an exhibit and form part of the record. Go ahead, please.

**Mr Larry Galajda:** Good morning, Mr Chairman and committee members. My name is Larry Galajda, P Eng. I'm an elected vice-president of the Association of Professional Engineers of Ontario. I'm here today on behalf of Harry Angus, P Eng, the president of the association, who regrets not being able to be here today.

With me today are Peter Large, P Eng, the executive director; Jose Pereira, manager of employment advisory services; Eric Smythe, P Eng, manager of complaints and discipline; John Keating, P Eng, general secretary; Hanna Pilar, manager of public relations, and finally, George Piper, our registrar.

The Association of Professional Engineers of Ontario, which I'll refer to as APEO, greatly appreciates this opportunity to address the standing committee on resources development on the subject of Bill 40. This presentation is a follow-up to a letter which we sent to the Minister of Labour in February, in which we commented on two issues included in the discussion paper, called Proposed Reform of the Labour Relations Act.

At that time, we expressed concern about the issue of replacement workers in situations involving public health and safety. In this presentation we will address the same issue in light of specific clauses found in Bill 40 and we will make several recommendations for your consideration.

Before starting, I would like to take a few minutes to describe the mandate of the Association of Professional Engineers of Ontario. APEO came into being with the passage of the first Professional Engineers Act by the Ontario Legislature in 1922. Full professional status was achieved in 1937, when APEO membership was made mandatory for those who wanted to practise professional engineering.

The primary role of the Association of Professional Engineers of Ontario is to serve and protect the public interest. APEO is a self-governing organization with about 61,000 members. APEO is responsible to the people of Ontario for licensing professional engineers, maintaining professional standards and upholding a code of professional conduct and ethics which guides engineers in their relations with the public, employers, the public and other engineers.

The association's main responsibilities in serving and protecting the public interest include establishing minimum standards of entry to the profession, licensing indi-

viduals who meet the minimum standards, ensuring unqualified persons are prevented from practising engineering, and disciplining members for professional misconduct. We operate under the Professional Engineers Act of Ontario, chapter 13, Statutes of Ontario, 1984, and we are accountable directly to the Attorney General of Ontario.

The Association of Professional Engineers of Ontario is not here to take sides. We are here to represent the public interest, not that of employers, bargaining units or any other interest group. Rather, our purpose is to alert this committee and the public to the threat to public life, health, safety and environmental damage that the enactment of section 73.2 of Bill 40 will bring about.

Our concerns are specifically with subsections 73.2(3) through 73.2(19) of Bill 40 with regard to situations where life, health and safety are concerned; the use of replacement workers in those situations; a bargaining unit's veto power in allowing replacement workers to work in those situations; the procedure for reaching agreement between the employer and the bargaining unit, and the inadequacy of subsection 73.2(10) with respect to identifying and dealing with emergency situations.

It is a fact that on many work sites hazardous materials, machinery and equipment must be maintained, monitored and controlled under the direction of professional engineers. If such hazardous materials, machinery and equipment are not properly maintained and monitored at all times, there will be a danger to life, health, safety and the environment.

As examples, water and sewage treatment plants, as well as thermal generating stations and blast furnaces, are seldom shut down. If not properly monitored and maintained at all times, there will be a danger to life, health, safety and the environment. It is our view that subsection 73.2(3) describes pre-emergency situations such as these.

Subsections (4) through (9) say in effect that the bargaining unit has to agree with the employer that a pre-emergency situation exists involving danger to life, health or safety; the destruction or serious deterioration of machinery, equipment or premises, or serious environmental damage. If the bargaining unit does not agree that a pre-emergency situation exists, then the employer has to follow a long and complicated procedure to appeal to the Ontario Labour Relations Board.

This may put the public at risk with respect to life, health and safety. In addition, the employer will be at risk with respect to assuming liability for danger to life, health or safety; the destruction or serious deterioration of machinery, equipment or premises, or serious environmental damage until a final decision is made. This in fact makes life, health, safety and the environment a part of the bargaining process at the negotiating table. Bargaining leads to compromise. Life, health, safety and the environment should not be compromised.

The safeguarding of life, health and safety has always been the prime purpose of the practice of professional engineering, as outlined in the Professional Engineers Act of Ontario. One of the association's responsibilities is to ensure that unqualified persons are prevented from practising professional engineering.



Bill 40, subsections 73.2(4) through 73.2(9), puts the bargaining unit in a position to judge whether public safety is at risk. This is a direct violation of the Professional Engineers Act, section 12. Further, there is provision in section 41 of the act for penalizing those in contravention.

In other words, Bill 40 would ultimately allow the bargaining unit to make professional engineering decisions involving danger to life, health and safety, which is dangerous and unacceptable to professional engineers, and ultimately the public. The bargaining unit would in fact be exercising authority without being accountable to the public for the impact of the decision. At the present time, employers are held solely accountable for serious environmental damage under environmental legislation; similarly, employers are obligated to adhere to proper safety practices as a condition of being insured.

The Association of Professional Engineers of Ontario recommends that subsection 73.2(3) be rewritten to indicate that solely those who are accountable will decide when a pre-emergency situation exists involving danger to life, health or safety; the destruction or serious deterioration of machinery, equipment or premises, or serious environmental damage.

We further recommend that subsection (3) be a standalone clause and that subsections (4) through (19) not apply in the case that (3) applies.

A further issue exists in the procedure that subsections (3) through (19) outline. If an employer believes a pre-emergency situation involving life, health, safety, machinery or the environment exists, and needs workers to prevent a disaster, the employer must notify the bargaining unit to get its agreement. Further, the bargaining unit may specify that either replacement workers or bargaining unit employees are to help out in the emergency situation.

This agreement and procedure may be dangerous for several reasons.

The procedure described in subsections (4) through (9) relies on a process to reach an agreement during a strike or lockout when the parties are likely to be antagonistic. Although subsection (7) refers to prompt notification by the bargaining unit, agreement may not be reached in sufficient time to prevent a pre-emergency situation from becoming a danger to life, health or safety; or leading to the destruction or serious deterioration of machinery, equipment or premises, or causing serious environmental damage.

Secondly, if the bargaining unit and employer cannot agree, subsections (11) through (13) outline the additional procedure of appealing to the Ontario Labour Relations Board, which may delay the decision in a pre-emergency situation even further. Situations describing section 3 do not lend themselves to any delay.

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Under Bill 40, in a lockout or strike situation, the professional engineer may be prevented from carrying out his or her duties as specified under section 86 of regulation 538-84 of the Professional Engineers Act. Specifically, a professional engineer will be prevented from "acting to correct or report a situation that the practitioner believes may endanger the safety or welfare of the public."

This puts the professional engineer in conflict with the bargaining unit leadership, which may not view the situation in the same light. In strike situations, emotions run high. The decision to use special replacement workers should rest with the employer, who will ultimately be solely responsible for any negative results with regard to life, health, safety, machinery or the environment.

The Association of Professional Engineers of Ontario recommends that the use of replacement workers be the sole decision of those who are accountable when subsection 73.2(3) applies.

The third issue concerns emergency situations. Subsection 73.2(10) may be interpreted by some as dealing with our concerns. However, it is too vague. There are no definitions of the term "emergency" and no time frames with regard to the procedure in an emergency situation. The Association of Professional Engineers of Ontario is obliged, under the Professional Engineers Act, to safeguard the public. We are obliged to act not only in emergency situations to save lives and control damage but to prevent emergency situations from occurring in the first place. By the time an emergency happens, it's already too late.

We recommend once again that subsection (3) be a standalone clause and that subsections (4) through (19) do not apply in the case that subsection (3) applies.

In summary, let me restate that the Association of Professional Engineers of Ontario is not taking sides with regard to collective bargaining. Rather, we believe that section 73.2, as written, puts the general public at risk when the employer and the bargaining unit fail to agree on what constitutes a danger to life, health, safety, machinery and the environment.

**The Chair:** Thank you for a submission that is precise and focused. I suppose that's what engineers do, so I wouldn't expect any less. Mr Ward, five minutes, please.

**Mr Brad Ward (Brantford):** Gentlemen, I'd like to thank you for your fine presentation. Just for my own interest and to gain some background about your association, you run a closed shop, do you not? If I wanted to be a professional engineer in Ontario, would I have to pay compulsory dues to your organization?

**Mr Galajda:** It is not as simple a procedure as that. You do have to qualify through a series of application procedures. Perhaps Peter could give—

**Mr Peter Large:** With respect, Mr Ward, we do not run a closed shop. That's the first point. But thank you anyway. We do not run a closed shop. The admission to our profession, like any other, is open to anyone who qualifies, and the qualification, admission standards are the same for anyone.

**Mr Ward:** So if I didn't want to pay my compulsory fee, I could still be a professional engineer in Ontario?

**Mr Large:** No.

**Mr Ward:** So I have to pay a compulsory fee, just so I understand. I'm trying to get some background here.

**Mr Large:** With respect, the compulsory fee, as it's put, in fact is the fee paid by members to run a self-governing profession at no cost to the public.

**Mr Ward:** Which is your organization.

**Mr Large:** That is our organization.

**Mr Ward:** And the administration costs that go with it.

**Mr Large:** Yes, sir.

**Mr Ward:** Okay. The Canadian Society for Professional Engineers: That's a separate organization?

**Mr Large:** Yes, it is.

**Mr Ward:** And they're as reputable as your organization?

**Mr Large:** The Canadian Society for Professional Engineers is in fact a group of professional engineers who have chosen to organize themselves in a particular way to provide services, as they see it, to the membership. They're professional engineers who have met all the standards that others have.

**Mr Ward:** They wear that ring.

**Mr Large:** They happen to. They're licensed like anybody else.

**Mr Ward:** Is it their position that the labour law reform, or updating the labour act, would not inhibit the responsibilities of the Professional Engineers Act?

**Mr Large:** Sorry, the question again?

**Mr Ward:** Are you aware of their position, whether or not they suggest that updating the labour act, the proposed Bill 40, would not inhibit the responsibilities of the Professional Engineers Act?

**Mr Large:** We're not aware of the CSPE's position.

**Mr Ward:** It's my understanding that it's their opinion that Bill 40 would not inhibit. That's just my understanding. They also suggest that since your organization is to ensure that the act is properly administered, your organization's prime concern should be whether or not Bill 40 infringes on your ability to administer that act.

**Mr Large:** I think that's our central position, that indeed Bill 40 as it's written suggests to us that the public interest may very well be endangered. The CSPE is a group of engineers that does not speak on behalf of anyone other than CSPE, although it is a member of the association of professional engineers. They have a view. It's a legitimate view, I have no doubt.

**Mr Ward:** It's just that whenever you hear two differences and they're all professional engineers, I guess you have to decide who's speaking for whom or who has reputable opinions, and I understand that your organization and theirs are both reputable in their own areas.

**Mr Large:** With respect, one more time, the CSPE is a group of engineers who are licensed by our association—no question—and are members of it. They represent their own particular interests and have a view. The AEPO represents the public interest as we presented today.

**The Chair:** Thank you. Ms Murdock, very briefly, please.

**Ms Murdock:** I want to thank you for actually being so focused and not as wide-ranging as many of the presenters have been in terms of discussing this.

Particularly, I want to ask you about subsection 73.2(15), which is, "The employer and the trade union may enter into an agreement governing the use, in the event of a strike or lockout, of striking or locked-out employees and of specified replacement workers to perform the work described in subsection (2) or (3)."

There's no time limit, it doesn't have to be done during a strike situation, it can be done during the life of an agreement or it can be done at the time of collective bargaining, it can be done at any time in terms of designating who specified replacement workers would be—

**The Chair:** Perhaps they can respond to that, Ms Murdock.

**Ms Murdock:** Yes.

**Mr Jose Pereira:** The position of the association was that matters of health and safety were not bargainable. In other words, you're saying section 15 allows for bargaining on what is and what's not. No?

**The Chair:** Okay. Mr Offer.

**Ms Murdock:** No, but he's not going to give me any more time.

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**Mr Offer:** Thank you for your presentation. I found it extremely helpful and I think it's really zeroed in on an area of the legislation which I think you have highlighted as being, for want of a better word, defective for your purposes.

I really have two questions in this area. The first is, could you help me out and focus me in terms of the type of situation where you might be called on when these problems would arise?

**Mr Galajda:** I'll try to use an example that is close to my own professional employment. It has to do with one that we referred to here on water treatment plants. An example would be that every water treatment plant in operation in Ontario—and urban municipalities provide water to the people for consumption—is under the responsibility and care of a professional engineer. In the actual day-to-day operation, that engineer delegates that responsibility of operation to technicians, employees and staff who would operate the water treatment facility.

If an incident occurred, simply just in the chlorination of the water—we have lots of automated procedures on how to chlorinate water, but accidents do occur, and excessive chlorination of water can be a life-threatening situation to the people who consume it—the professional engineer has to be able to take immediate action to correct that situation.

If he is prevented by a process that delays him being able to get workers into the workplace to rectify that situation, then the threat is to the public in that they consume the water that's been overchlorinated, which can be hazardous to their health.

**Mr Offer:** That example is quite helpful for myself.



My next question deals with the fact that it would seem to me there are probably other pieces of legislation that might dictate to you that action is required. You may have your own code, but there may be other pieces of legislation where you'll come into conflict if you don't act, yet you're bound, potentially, by legislation in which you can't act. I'm wondering if that is a concern.

**Mr Galajda:** I believe it would be. There are a variety of codes that apply to the building industry: the Ontario Building Code, the Canadian electrical safety code. Structural engineers are required to certify that buildings are safe for occupancy. There are a host of conditions that could be presented, even in temporary works facilities: scaffolding that's being erected that falls down, acts of vandalism that could occur on sites before they're even completed. It's hard to be specific in such a very broad category.

**Mr Offer:** As far as I'm concerned, you've made the case.

**Mr McGuinty:** I'm not sure if I really have a question, gentlemen. I just want to thank you for your presentation and for the particular focus you've brought to it. When we're talking about legislation at Queen's Park, it's the kind of thing we discuss in the abstract, in a somewhat rarefied atmosphere, without any real understanding of the implication it has on the front lines.

The second comment I would make is that we have heard often from representatives of the business sector and of labour. These are big boys and big girls, quite adept at fending for themselves, but it's not that often we hear about someone speaking on behalf of the public interest, and I want to commend you for that.

**Mr Turnbull:** Thank you very much. An excellent presentation.

Just by way of preamble to my question, I had a phone call this morning from a member of your association who suggested that you didn't have a mandate to speak here today. I think basically that should be taken care of in the last paragraph of your summary which says that you're not taking a position on either side with respect to collective bargaining, you're just talking about the general public interest being at risk. Hopefully, my constituent is satisfied with that.

In view of the very significant safety hazards that the public could be exposed to, do you not think it would be reasonable that matters of health and safety should completely supersede the labour act in all matters?

**Mr Galajda:** I believe that's the position we're suggesting this committee consider for refinement to the writing of the act.

**Mr Turnbull:** So when we refer this back to the House, and indeed in clause-by-clause, we should in some way incorporate some reflection of that, notwithstanding this bill, which I suspect is going to be passed, because the NDP have the largest number of seats, as you well know. The Conservative Party thoroughly intends to get rid of this piece of legislation when we form the next government, but in the meantime, gentlemen—

**The Chair:** Sure, Mr Turnbull. It reminds me of a promise to bring in public auto insurance.

**Mr Turnbull:** Yes. That was then and this is now.

**The Chair:** Don't tell me about leaders' promises.

**Mr Turnbull:** So, gentlemen, we should incorporate that into the body of the legislation.

**Mr Galajda:** We would appreciate it if you would do.

**Mrs Witmer:** I don't have a question, but as Labour critic for our party I certainly do appreciate the very concise presentation you have made. It certainly will help us to bring forward these amendments on behalf of the public.

**The Chair:** I want to thank the Association of Professional Engineers of Ontario for its interest in this matter, for its comments today and for sharing its views with us. You've made a valuable contribution to this process and this committee is grateful to you, gentlemen. Take care.

**Mr Offer:** Just on a point of order, Mr Chairman: You will recall that last night a motion of mine was put forward.

**The Chair:** Yes, returnable at five o'clock.

**Mr Hope:** Mr Chairman, a question for legislative research, two areas in which I'd like legislative research to find the information, if possible: In any jurisdiction in North America or in the European countries, does the law of plant closure justification exist? Also, on the educational perspective of things, in any jurisdiction, both in North America or Europe, does the curriculum in history provide for labour history? In any of the education systems that exist in North America or in the European countries, is labour history a part of the curriculum in the history courses? Those are the two areas.

**The Chair:** We are recessing till 1:30. Thank you, people.

The committee recessed at 1157.



## AFTERNOON SITTING

The committee resumed at 1330.

## PROJECT ECONOMIC GROWTH

**The Chair:** We're ready to resume. The first participant this afternoon is Project Economic Growth. Please tell us your names, titles, if any, and proceed with your submissions. Your written submission has already been filed as an exhibit and will form part of the record.

**Mr Howard Kaufman:** Thank you very much, Mr Chairman. My name is Howard Kaufman; I'm vice-president, secretary and general counsel for Xerox Canada. With me are Larry Morden, corporate vice-president of human resources for Ault Foods, and Jason Hanson, a solicitor with Osler, Hoskin and Harcourt.

We're very pleased to have the opportunity to appear before the committee today as representatives of Project Economic Growth, which is often known by its acronym as PEG, and we'd like to share some views we have on Bill 40.

My remarks today will cover three areas. First, I'd like to tell you briefly about Project Economic Growth and hopefully clarify some of the misconceptions that exist about who we are and what we have done.

Second, I'd like to provide an overview of the content of our position paper on Bill 40 which has been distributed to you. In the paper, we put forward a number of principles for meaningful reform and propose seven key amendments and alternatives to the government's proposed Labour Relations and Employment Statute Law Amendment Act.

Time does not allow us to cover each proposal in detail, so we've elected to highlight three for you today. We've provided as well a copy, as I mentioned, of the paper of my remarks.

You'll notice we have chosen not to spend our time today focusing on the economic impact of the proposed changes or on the absence of what we believe is a meaningful process that would have allowed employers to participate in developing fair and balanced labour law reform. These remain important issues for us, but they have been covered very thoroughly by many other presentations. Thus, we do not wish to belabour a point but, equally, we do not wish it to be forgotten.

Let me start off, therefore, with a few comments about Project Economic Growth. PEG is an ad hoc coalition representing some 500 small, medium and large employers from across the province. Contrary to the views expressed in a recent Ontario NDP publication, we are non-partisan and have no affiliation with the National Citizens' Coalition.

PEG was formed late in the summer of 1991 to promote economic growth in the province. We stated our fundamental belief that both unionized and non-unionized workplaces are valid and dynamic models of economic activity. Even before the release of the November discussion paper, PEG had called on the government to bring the workplace partners together to study labour law reform and develop recommendations to enhance partnership and productivity in Ontario's workplaces. In fact, since Sep-

tember 1991 we've written 15 letters and met with dozens of government officials to try to establish just such a process.

However, faced with the introduction of the bill on June 4, and with no advisory group with whom to build consensus on labour law, PEG made a conscious decision to deal with the substance of the legislation. We don't agree with it, but if the government is determined to pass Bill 40, it must be significantly improved if it is to form the basis of Ontario's future labour relations.

In July we put forward a series of alternatives that will help offset those provisions we believe will cause adverse economic impact, and we also put forward alternatives to help restore balance to the bill.

We have met with officials of the Ministry of Labour to discuss a draft of PEG's paper, and we've joined with the All Business Coalition and the More Jobs Coalition to submit a separate, thorough written analysis of Bill 40 conducted by industrial relations practitioners who are involved in our coalitions.

We sincerely hope that these analyses will be seriously studied and that the hundreds of hours of work put into them will result in concrete improvements to the bill. That's what we're here to talk to you about today.

PEG doesn't oppose the reform of Ontario's labour laws. We believe, however, that reform must prepare our workplaces for the future, not the past.

Fair and balanced reform should respect certain fundamental workplace principles. These include removal of unreasonable barriers faced by unions, freedom of individual choice and protection of employee privacy, and respect for an employer's need to produce and deliver products and services at cost-competitive prices.

In keeping with these principles, PEG's proposals for balanced labour law are based on the following six criteria, all of which have interwoven into them the fundamental principles I've just enumerated to you:

1. Labour law reform must be fair and balanced and, as a total package, should favour neither unions nor employers.

2. Labour law reform should be based on true workplace needs and the elimination of unreasonable barriers faced by unions.

3. Labour law reforms must respect an individual's right to full and complete information and the protection of privacy. An individual's decision to join a union should be based on a free choice after having received adequate information.

4. Labour law reform must not restrict Ontario's businesses from producing and delivering quality products at cost-competitive prices.

5. Labour law reform must be designed to encourage workplace harmony, cooperation and flexibility while improving the productivity and competitiveness of the employer.

6. Labour law reforms must respect the rights of those not directly involved in a labour dispute.

We hope the committee members will agree with us that these are valid basic principles. They form the foundation for the improvements we put forward in our position paper.

In the written presentation which we have distributed to you, we have highlighted a number of areas in which we believe the bill can be greatly improved. These are not the only areas, but they are the key ones.

The paper provides details on our proposals for amendments to provide a fairer and more balanced purpose clause, and for alternatives to streamline the union certification process, provide employees with balanced information and allow them to make informed decisions through a secret ballot.

We also propose amendments to the proposed replacement worker provisions to ensure that strikes at sole-source and just-in-time suppliers recognize that these businesses really are essential services to their national or international customers.

A proposed definition of legal picketing is something we put forward. It is not included in the bill, and we believe it should be.

Another proposal is for amendments to the proposed consolidation of bargaining units so as to more accurately reflect the wishes of the employees in the affected units and the legitimate interests of the employers.

We ask that alternatives to the proposed automatic access to first-contract arbitration to support the primacy of collective bargaining be considered.

Finally, there is a proposal for the public review of appointments of Ontario Labour Relations Board members so as to maintain confidence in the board by workers, unions, employers and generally the public at large, and to ensure board impartiality.

We would be happy to discuss all of these proposals with the committee, but in the interests of time, as I mentioned before, we will focus on three: the certification process, the use of replacement workers and a legal definition of picketing.

Let me start with the certification process. The bill puts forward several amendments to the act designed to facilitate trade union organizing campaigns. In order to ensure that any new certification process respects fundamental principles of fairness, freedom of information, the protection of privacy and the rights of unrelated third parties, the bill should be amended so that employees are provided with complete and balanced information. It should ensure freedom of choice through a secret ballot process.

PEG proposes that the bill be amended to allow for the following certification process in place of that put forward in the bill:

Union organizers would only be required to obtain signed membership cards from a percentage of the proposed bargaining units—something lower than 40%, whether it's 25% or 30%—to trigger the process.

Employees would not be required to pay a membership fee when signing a union card.

Union organizers would notify the board and the employer of their intent to organize a given workplace and provide evidence that they have signed union cards from

the requisite number of employees in the proposed bargaining unit.

The board would determine the appropriate bargaining unit and whether the union has that requisite percentage, as well as obtaining the names and addresses of all employees in the proposed bargaining unit from the employer.

The board would then solicit and obtain written information from both the employer and the union with respect to the impact of certifying a union in that workplace; in other words, allow each side to present its views for consideration by the employees in question.

The board would then distribute the information received from the union and the employer to the targeted employees, as well as the generic information package. This package would be developed by the board for use in union organizing campaigns. It would include information on the right to and significance of trade union membership, union fees, significance of strikes and a lot of other things like that. All of this information would then be posted in the workplace during the campaign.

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The board would call and hold a supervised secret ballot within a reasonable period of time, and the costs of that vote would be paid equally between the employer and the union. Certification would be granted upon a simple majority, 50% plus one, of those casting the ballot.

Coercion by employers and union organizers would be prohibited. If employers are found to have committed an unfair labour practice such that the true wishes of the employees cannot be ascertained, automatic certification would be granted; if unions are found to have committed an unfair labour practice, they would be precluded from certifying a union in the workplace in question for a full year. The board would be the tribunal required to determine whether violation in this regard has occurred.

These changes would restore freedom of choice and protection of privacy and, at the same time, remove unreasonable barriers faced by unions in today's certification process. They would go a long way to build a spirit of harmony and cooperation in the workplace.

Let me now turn to the question of replacement workers and picketing.

The prohibition on the use of replacement workers has become symbolic to both sides of the debate on the proposed amendments. For us, the bill's proposal fails to recognize the realities of the new global marketplace. Ontario's economy is largely dependent on just-in-time supply and delivery of goods and services. Many suppliers sell to major industries throughout North America. Even one strike at one of these critical suppliers could cripple an entire continental industry within days, and we've seen evidence of that in current events.

The trade union's economic sanction is the strike. The employer's balance is the ability to continue to operate. Remove one party's economic weapon, and the balance of power swings sharply to the other. Collective bargaining becomes a hollow process in this environment.

While PEG does not agree with the replacement worker provision, if there is to be one, it ought to be fair and balanced. Therefore, we suggest the following:



An expanded definition of essential services to further allow for the use of replacement workers to allow employers to maintain the production of goods, services and power supply from sole-source and/or just-in-time suppliers; prevent the spoilage of goods, including food products; protect against theft or damage to property;

Permit the use of replacement workers from any source in these situations for a period of 60 days, after which employers would be required to apply to the OLRB for an extension. Guidelines to assist the board should be set out;

Remove provisions which place a reverse onus on employers under the proposed section 73.2(14);

Stipulate that employees from facilities other than the struck facility would not be considered replacement workers;

Remove the 60% strike vote provision;

Remove the proposed new right of non-striking employees to refuse to do struck work.

What we are proposing is a window for employers to continue to provide essential services in a just-in-time environment. One of the reasons given for the government's proposals on replacement workers is that it will replace picket line violence. Our proposal, which would allow for replacement workers in limited circumstances and for a limited time, presents no greater risk of picket line violence, as even under Bill 40 managers and supervisors will still continue to cross the picket line.

If picket line violence is the problem, Bill 40 doesn't provide the solution. What is required is a legal definition of picketing, which we recommend be added to the bill, and this is the third proposal which we wish to discuss with you today.

In our discussions with the Ministry of Labour, we learned that a study on picketing is being considered, with the Ministry of the Attorney General taking the lead. While we applaud this initiative, unfortunately the results of this study will not be available in time to influence the provisions of Bill 40.

We recommend that the bill be amended so as to define picketing. In other words, its purpose is to share information; it's not designed as an economic blockade. We should define where and when picketing is permitted and outline provisions for notice to employers; set out the number of picketers that are acceptable in various situations; provide notice to third parties when picketing is to occur on their property; establish guidelines as to acceptable and unacceptable picketing practices and establish alternatives such as the posting of information in public places; define employer rights to protect property; establish a process for disciplining and dealing with acts of violence, and create an expedited hearing process to deal with organizing and create an expedited hearing process to deal with organizing and picketing activity.

We suggest these changes will provide a better solution to picket line violence than the replacement worker provisions in Bill 40. Our submission also includes a list of items where we feel clarification is necessary. When the text of Bill 40 is compared to the discussion paper and to the rationale for the changes presented in the fact sheets, there are ambiguities that need to be addressed.

Look at the example of the proposal to permit security guards to join a union of their choice. The fact sheet indicates that security guards would be placed in a separate bargaining unit if the board saw a potential conflict of interest. Yet what the bill provides is the placement only of security guards "who monitor other employees" in a separate bargaining unit. This narrows the opportunity to minimize potential conflicts of interest by potentially exempting guards who protect employer property and who ought to be placed in a separate bargaining unit.

The bill also proposes to grant the board power to combine bargaining units where the bargaining units are represented by the same trade union. The bill should clarify that the board's power to combine bargaining units cannot be used to place guards in the same bargaining unit as the employees they monitor.

In conclusion, we have heard the government speak out frequently on the need for increased cooperation between labour-market parties if Ontario is to compete in the new global economy. If we want employers and trade unions to work together to achieve greater prosperity, there must be a process whereby issues such as labour law reform can be discussed and consensus achieved.

PEG submits its position paper in the hope that the committee will take seriously our suggestions and make concrete changes to Bill 40. That would allow the process of consensus to begin. We would welcome any of your questions and we'll try and answer everything you put forward.

**The Chair:** Thank you, sir; four minutes per caucus.

**Mrs Witmer:** I'd like to congratulate the members of your group for making an excellent presentation. I really appreciate the fact that you have focused specifically on the recommendations. I'm pleased that Ms Murdock has reappeared in the room because, as you know, for a long time I have been encouraging the government to take a look at the secret ballot vote for certification, and in discussions that Ms Murdock and I have had she's often asked me for the specifics. I think what you have outlined here is an excellent process that the government could use if indeed it were to follow through and provide an opportunity for the individual.

Do you feel that if the secret ballot vote were introduced for certification and if the amendments were made to the replacement worker section, that would alleviate a great many of the concerns of the business community?

**Mr Kaufman:** I can't speak for the entire business community, but certainly I think a lot of the issues that have been raised would be answered by a secret ballot process to enable employees to make an informed choice, which is the key.

As to the replacement workers, we have suggested a change in light of what the government's proposing. We don't agree that replacement workers should be banned. However, if there's something to be done in this area to improve it, we think that would be an improvement many businesses would accept. There are bound to be many of our members who would still not accept that, but on balance I



think it would be a significant improvement in dealing with this issue in this way.

**Mrs Witmer:** Further to that, I guess you know there is certainly concern beyond the boundaries of Ontario about this labour law reform. Do you see these as being two of the issues that are of particular concern to people who may be potential investors in creating jobs in this province?

**Mr Kaufman:** Certainly they would be, and changes to these I think would help to alleviate many of the concerns, real or imagined, that people have with the prospect of Bill 40 coming into effect.

1350

**Mr Turnbull:** Mr Kaufman, could you comment on the ability of multinationals domiciled in Canada to get world mandates if the bill, in its present form, gets passage?

**Mr Kaufman:** World mandates are something every multinational offers its subsidiaries around the world, and they're competed for on a regular basis. To the extent that people begin to think of issues as to where they would place those mandates, they take a lot of issues into account, and a bill such as this would in fact be one of the issues they would consider. It's not the only factor, obviously; there are a lot of factors that go into it. But when you're trying to compete against other nations in getting a mandate, you'd like to have as much as you can on your side. I think a bill such as this in its present form would be an unnecessary black mark or strike against subsidiaries here. We've got to compete and we've got to compete fairly. We don't want to have additional burdens or unnecessary burdens.

**Mr Turnbull:** Just one other quick question: You comment in your presentation that you would allow third-party property picketing but you would give notice to the owner. Can I suggest that perhaps you represent the industrial sector, where it would affect you less, and that this is more likely to affect retail operations where a shopping plaza owner, through no fault of his own, has picketing on his premises? It's perhaps a little beyond the scope of what you should be—I'm not trying to challenge you; I'm just suggesting that perhaps it isn't an area that really particularly affects your members.

**Mr Kaufman:** I think it does. It may not affect as much as certain other types, but I think the principle is the same. That's what we're addressing here, the various principles. We represent a wide variety of groups, businesses and industries, and I think the principle is important. There should be service of notice when it's about to occur. I think, as a matter of principle, that would be important to us.

**Mr Hayes:** Thank you for your presentation. It's very well-put-together. One of the things some people have mentioned is that Ford, GM and other corporations have made investment in Ontario, but that if this bill had been in effect earlier, they might not have made those decisions to invest the millions of dollars they have. One individual stated that these plans are years ahead and to stop that now would be like trying to stop a plane in mid-takeoff.

I notice that about a year ago General Motors announced it was moving production from California into Sainte-Thérèse, Quebec, yet it's had that anti-replacement worker legislation since 1978. It makes me question how that anti-replacement worker legislation would actually hinder the operations here. And in Quebec there are stats that claim hours of work lost due to work stoppages or strikes have reduced since that time by 30%. I know you might say they've had more strikes, but there's been less time lost and they were back to work sooner in that particular province.

I really wonder why it doesn't seem to bother General Motors moving from California into Quebec when it has that particular legislation, yet it would bother us here.

**Mr Kaufman:** I really can't comment on General Motors specifically, but perhaps more investment would have come if there wasn't that type of legislation.

All we're saying is that there are a lot of factors that go into a decision and everything negative has to be offset by something positive. To introduce this kind of change in Ontario, we suggest, would be an additional negative. Perhaps there might be more positive elements that would offset it, but on balance we think it's unnecessary.

The experience in Quebec I think speaks for itself in some ways. Perhaps they would have had more investment in the labour area if that legislation didn't exist.

**Mr Hayes:** But still they weren't afraid to move in. That's the point.

**Mr Kaufman:** Again, I can't comment on specifics of General Motors. I wasn't a part of the decision. I suspect they looked at a number of criteria, of which this was one.

**Mr Hope:** When I went through the list of companies, it was interesting to hit Rockwell International of Canada. I used to be a proud employee of theirs; I'm starting to wonder why now.

Looking at this proposal on the replacement worker aspect, there are two areas I'd like to focus on. You talk about balance. I remember, during three-year collective agreements, that I used to be hand in hand with the company making presentations to other corporations, saying how good a working relationship we had, to get contracts into our workplaces. I think the campaigns that have been portrayed have had more of a negative impact than the legislation itself has.

I'm wondering about the second point you have on replacement workers, permitting replacement workers from any source for a period of 60 days. Have you ever been on a picket line, or a worker in an unemployment line who has been out of work for 60 days?

**The Chair:** Mr Hope, we've got to move on. These people will want to respond to you, perhaps.

**Mr Kaufman:** What we're trying to do is suggest a compromise in the principle, a time for people to reflect. We've seen violence on the picket line for a variety of reasons. Some people argue that it's due to replacement workers. It's a variety of reasons that fall into that category of violence. We think there is a need in this particular case to give the opportunity for collective bargaining to move forward. Moving the balance in favour of the unions,

which is what we see this provision would do, we think is not fair or right, and we think balance should be struck. Therefore, while we accept in that sense the principle of replacement workers, we ask for a delay before it's fully implemented in certain particular cases. We don't think that's unreasonable to request when we're in an economy that has to have suppliers acting in a just-in-time capacity to be able to meet their commitments.

**Mr Offer:** Thank you for your presentation. I believe your suggestions on a secret ballot are both balanced and fundamental to the freedom of choice for individual workers. The government, however, appears opposed to the secret ballot for certification in this bill, surprisingly accepting the principle of secret ballot for local unions breaking away from internationals in another bill, Bill 80. It seems to me that the government is embarking on a democracy of convenience.

My question to you is based on your presentation on page 10, where you speak about the trigger before a secret ballot commences. You say it should be something lower than 40%. Could you share with us what you believe would be an appropriate trigger?

**Mr Kaufman:** That's something I think would have to be discussed with a variety of groups, labour and management. I personally would believe that something in the order of 30% would not be an unreasonable number. The idea is to get a large enough group to indicate they're willing to start the process but not so low as to make it very, very easy. Once that level has been achieved, then all the employees in question have a chance to make a decision based on informed choice, with proper information.

**Mr Gerry Phillips (Scarborough-Agincourt):** I too appreciate the effort that's gone into this. I think you've given us some good recommendations.

I wanted to talk a little about the replacement workers. I would just comment that I think General Motors never tries to run one of its plants during a strike, so replacement workers is not an issue to them on a vehicle assembly, I think.

But on the replacement workers, you've obviously had a lot of debate around your organization, I would think, about which industries and on what basis you would reach these criteria of essential services. There are a lot of businesses that wouldn't benefit from your proposal here but would find it terribly difficult to sustain a business closure for any length of time. Many retailers, I think, would feel that if they have a strike that closes their location for a sustained period, they have real trouble getting their customers back. I think newspapers in competitive markets, if they're closed for a long period, have difficulty getting going again. I'm wondering if your organization considered other circumstances and how you arrived at these as the criteria you would use for where replacement workers could be provided.

**Mr Kaufman:** We had a long debate, obviously, and you can extend the list in many instances. There are a lot of examples as to where hardship would occur. But this would be the benefit if we had a dialogue within which to

discuss all of this; perhaps we'd come out with a more appropriate list.

We came down with this one as most important. I don't want to denigrate the other areas or businesses that would suffer as a result of this, but we believe that in this particular instance a compromise of some sort is in order, and perhaps over time there'd be other explanations as to why in other industries it would be appropriate to do the same thing. We had to make, if you will, a cutoff point, a decision, and this is what we choose to do in the interest of making this presentation and suggestion to the government.

**The Chair:** Thank you. The committee is grateful to Project Economic Growth and its spokespeople today for their views and their participation in this process. We thank you and trust that you'll keep in touch. Take care.

1400

#### OSHAWA CHAMBER OF COMMERCE

**The Chair:** The next participant is the Oshawa Chamber of Commerce. Would they please come forward, have a seat and give us their names and titles, if any. We've got your written material. That's going to be made an exhibit. It'll form part of the record. Go ahead, people.

**Mr Fred Ball:** Mr Chairman and members of the committee, thank you for the opportunity of appearing before you today. I want to take this opportunity to introduce the people you see seated at the table.

On my extreme right is Mr Andy Emmink; he is a member of the Ajax-Pickering Board of Trade and he operates a business known as A. Emmink Associates Ltd. Next to him is Ms Kim Warburton, who is employed by Mediacom Inc and is a member of the Oshawa Chamber of Commerce and a member of the Oshawa Chamber of Commerce government affairs committee. Next to me is Mr Robert Armstrong, who is president of the Armstrong Funeral Home in the city of Oshawa, a member of the Oshawa Chamber of Commerce and a member of the Oshawa Chamber of Commerce government affairs committee. My name is Fred Ball. I operate a business called Ball, Callery and Associates and I'm chairman of the Oshawa Chamber of Commerce's government affairs committee.

On behalf of the Oshawa Chamber of Commerce and the Ajax-Pickering Board of Trade, I thank you for providing us with the opportunity of speaking to you today concerning the government's proposed amendments to the Ontario Labour Relations Act, known as Bill 40.

The Oshawa Chamber of Commerce and the Ajax-Pickering board represent 1,300 businesses employing thousands of people. The majority of our businesses are small, with 80% employing less than 10.

It is the opinion of both business organizations that the passing of Bill 40 will dramatically impact an already weak economy base in Durham region. We have five key areas of concern, which I will highlight in brief in order to keep within the time frame allocated for our presentation.

First of all, economic climate: Ontario's economy continues to lag. Over 580,000 people are unemployed in the province and 12.5% of the workforce are collecting



unemployment insurance benefits in Durham region. There are no signs of significant improvements through investment or new business locations. I'm sure you're all well aware of our situation in Durham region concerning the General Motors situation extending to its suppliers.

Whether you agree or disagree with the content of Bill 40, there is no doubt that Bill 40 is influencing decision-makers concerning investment in Ontario. Our members are very concerned that if approved in its current form, Bill 40 will most assuredly discourage investment in Durham region and in the province as a whole.

Item 2, impact of proposed changes on small businesses: Most small business people strictly focus on operating their business. Unlike larger firms, no staff is available to interpret and study government proposals. There is little extra time to volunteer for associations or boards that may be delving into legislative issues. Many rely on local chambers of commerce or boards of trade for assistance.

Small business did not appreciate until recently the implications of the legislation in the review process. In fact, other than newspaper articles, very little material has reached small business operations in our community. We are not aware of any concise or readable material being sent to our businesses from the Ministry of Labour. As a chamber, we are aware that only now some of the business operators are beginning to understand the impact of the proposed changes outlined in Bill 40, and frankly, it makes them extremely uneasy.

It is important to understand the psyche of small business operators. Most are true entrepreneurs. The majority are not unionized. Pride and sense of ownership are fundamental. Small mom-and-pop operations look to the government to create an environment that supports and encourages business growth. Profit margins are slim. Perceived lack of control and overregulation easily lead to frustration and to consider alternatives.

Item 3, the use of replacement workers: The proposal makes it illegal in most cases to use replacement workers when employees go on strike. For many small businesses, the use of replacement workers can mean the difference between survival and bankruptcy. The choice is simple: Meet union demands irrespective of merit or the ability to pay, or close shop.

While a business may not directly feel the impact of the replacement worker policy, the impact on their unionized suppliers and customers will ultimately come home to roost. Small, locally owned and managed companies are particularly at risk because they lack the resources to weather a third-party dispute.

In our opinion, the ban on replacement workers shifts negotiating power directly to the unions. Our businesses are vulnerable, and this policy makes them even more so.

Our recommendation to this committee is that you recommend that this aspect be reconsidered and, in particular, that attention be paid to the impact of the proposal on the legitimate concerns of smaller businesses.

Item 4, union organizing: There is no doubt that changes are needed to this area of the legislation. Under the existing legislation, if 55% of the employees pay \$1

and sign a union card, they are unionized. It is possible to stop the automatic certification process if you get a sufficient number of card-signers to recant from their earlier membership decision through a petition process.

The proposed changes include dropping the token \$1 membership fee and the threshold support to require a vote dropped from 45% to 40%. Automatic certification with 55% membership cards stands and can't be recanted under the proposed legislation.

Our concern is that the business community, whether right or wrong, views the unionization process with much alarm. To a small business person, it is often seen as a defeat or a personal insult.

Business people often believe they are victimized by a stacked automatic certification process and, if all the employees truly had an opportunity to express themselves by secret ballot, that the majority would vote against unionization. This may not be true, but it is a widely held belief. This sows the seeds for poor relations between the employer and the union representative from the beginning. The employer meets the union representative during the first-contract negotiations, believing that the union does not represent the true interest of all the employees—definitely not a good place to start.

When Don Eastman, vice-president of the Ontario Chamber of Commerce, which represents 170 chambers of commerce and boards of trade in Ontario, met with the legislative committee on August 5, he requested that a secret ballot be held prior to union certification. We support this request and ask that the committee give this matter full consideration.

Item 5, first-contract arbitration: Access to arbitration will be permitted 30 days after the union is in a legal strike position. The requirement that the applicant be able to demonstrate why arbitration instead of collective bargaining is required is eliminated. Does this support good-faith bargaining? Does it encourage discussions between employers and unions?

We would ask the committee to consider whether this achieves the stated objective of promoting a harmonious relationship between labour and business.

We believe that first-contract arbitration will dramatically increase and the employers' ability to negotiate terms which are appropriate to his or her operations will be severely limited.

Our recommendation is to limit the access to arbitration and encourage collective bargaining.

Our conclusions: The Oshawa Chamber of Commerce and the Ajax-Pickering Board of Trade recognize that the Ontario Labour Relations Act may need review.

Small business is only now beginning to appreciate the potential of the proposed legislation.

Small business relies on the Ontario government to protect their interests, as well as those of all citizens.

We don't believe the proposed legislation protects the interests of small business, the largest employer group in Ontario.

Our respective communities have been unfairly forced into taking sides on this legislation without fully understanding all implications. Our communities are divided unjustly:

labour versus business. This should never have been allowed to happen.

We need to develop a community approach, encouraging both labour and business to participate fully in the review process and to come up with recommendations that are widely supported, not just a win-or-lose situation pitting one group against the other.

The bottom line is economic recovery. There is no disagreement here. No one wants to see Ontario's economy continue to struggle. We want jobs and economic success. This is only achievable by working together. Bill 40 is separating our communities into two camps, and while we are fighting, the rest of this country, and indeed North America, will pass us by. At the end of the day we'll still be squabbling, our economy will be worse and the only legislation needing our attention will relate to unemployment.

The Oshawa Chamber of Commerce and the Ajax-Pickering Board of Trade strongly advise that this committee recommend further review of the proposal, its impact on small business and our communities, before it is put forward for final approval.

1410

**The Chair:** Thank you very much, sir. Six minutes per caucus.

**Mr Wood:** Thank you for coming forward from Oshawa and the Pickering area. I noticed on page 3 you pointed out that you agree that the OLRA should be amended as there have been no major amendments to it since 1975, I believe. I see on page 3 you've said you agree that it needs a review.

On page 1 you pointed out that the proposed Bill 40 is influencing decision-makers concerning investment in Ontario. I just wanted to point out some of the companies that are coming into Ontario: Intercity Products Corp is moving from Illinois. They produce air conditioners. There are going to be 300 jobs in Brantford. Fleck Manufacturing—electronics, wire harness—is moving 75 jobs to Tillsonburg from Mexico. Fasco Motors in Morristown, Tennessee, is bringing 100 jobs into Cambridge. Westinghouse Canada—coils for motors and generators—is moving from Juarez, Mexico, 22 jobs into Mississauga.

In my home town, Spruce Falls Inc is a new company, and I'm proud to say that it's made a \$1.2-million profit in the first seven months of its operation and is investing over \$200 million in construction. They're all Canadian contracts, most of them are from within Ontario, so there is a lot of positive feeling out there even though some people would like to believe there are negative feelings out there. But I wanted to point out those positive companies that went to other countries and are moving back into Ontario and looking forward to a bright future in creating jobs. I just wanted to know what comments you might have on this.

I know there have been a lot of billboards and media print and TV and radio that some of the groups have taken up, that just the thought of amendments has produced billboards saying there's a lot of fear being created out there. But I just wanted to see what reaction you have when there

are other companies that have taken the positive approach in saying, "We think Ontario's a good place to do business, and we want to move back in there and show positive economic recovery to Ontario," as well as, as I said before, a paper mill in my home town, which had been declared almost dead about 14 months ago. Now it's one of the only mills in North America that's showed a big profit and is investing over \$200 million in northern Ontario. I just wanted to leave it at that and see if you had any comments.

**Mr Ball:** Did you want me to respond to that, Mr Chairman?

**The Chair:** If you wish, sir.

**Mr Ball:** Mr Wood, the information you've provided, some of it I knew and some of it is news to me, and frankly, it is good news. But the point we're attempting to make is that what we represent is the small business operator, the person who employs less than 10 people, and the best information we have is that 80% of the businesses in Ontario are just like us, small business.

It is good to hear of the large businesses that are making investment or rejuvenating plants—as you said, the paper mill—but the fact of the matter is that what we represent and the point we want to make is that small business is not doing the same thing. People are not making the investments, beginning businesses, expanding their small businesses, at the present time.

**Mr Wood:** Because of the recession?

**Mr Ball:** Because of the recession, yes, but the changes suggested in Bill 40 are not giving them a warm, comfortable feeling.

**Mr Wood:** I'll defer to Ms Murdock.

**Ms Murdock:** He's given me one minute to ask a question and get an answer, so I'll be quick.

One of the points that you made was in terms of small business only now realizing the implications or the impact that this legislation might have on it. I know that my ministry certainly has sent out information to the Ontario Chamber of Commerce, assuming it would go out to other chambers. It also sent out materials to anyone who made a submission or wrote a letter and many of those were chambers from smaller communities across Ontario.

Also, there's the fact that during the consultations we heard from a number of small businesses, particularly when we went out of Toronto on the road. So I'm wondering how that jibes. I don't see how they're just now realizing this. Also, there's the media campaign that has been quite prevalent prior to the discussion paper and after the discussion paper. It doesn't jibe.

**The Chair:** Does anybody wish to respond to that?

**Mr Andy Emmink:** Perhaps I could comment on that, Ms Murdock. The reality of operating a small business in the climate in which we've operated over the last three years has been one that's based on survival. If we as small business operators had the luxury to sit down and read every piece of paper that crossed our desks, then perhaps we would have been making much more cogent submissions at a much earlier stage in the process. But the fact of the matter is that we're trying to meet payroll, that we're



trying to pay creditors, that we're trying to keep suppliers, that we're trying to make new clients. We simply don't have that luxury. For anyone who has actually lived in that environment over the past three years, it has been very tough.

That may sound like we're simply making excuses, but we're also living in the real world. Most people will concede that when something of this nature occurs, it's not until it's almost breathing down our necks that we begin to take notice, and when we begin to take notice and try to assess some of the implications and we see what it may do, that's when you see these kinds of concerns expressed here today.

**Mr Phillips:** I appreciate the brief. You can see the challenge we have here, because the government members would say the business community is exaggerating things, that—

**Mr Hope:** We'll say what we need to say, Gerry, don't worry.

**Mr Phillips:** We hear the same thing each time: "The business community is exaggerating the problem. All the investment is taking place and you're just trying to be alarmist to protect your profit interests." We in the opposition say: "Listen, Ontario has a record level of unemployment. Plant closures in the first seven months of 1992 were 30% higher than they were a year ago and 45% higher than they were two years ago; 70% of those workers who are laid off in plant closures are unionized workers so, in our opinion, this bill does nothing to help protect them."

I appreciate your comments on small business. We have to internalize the challenge of small business. A small business manager is often the sales manager, the marketing manager, the product development manager and the human resources manager. He doesn't have time to understand everything that's coming down the pike.

We think the implications of this legislation are serious for the job situation and the investment situation. The government members say: "No, it isn't. This is not going to have a negative impact. This will pass very quickly." Can you be at all helpful to us in trying to quantify the impact that it's going to have? I don't want to be one of these people who say, "I told you so," two years from now, but I will; I guarantee you I will. It's like when I told you about how the budget was wrong and now you admit the budget was wrong.

Interjection.

**Mr Phillips:** No, the Treasurer himself would say that last year's budget was a mistake. Can the board and the chamber be helpful in quantifying for the members the impact on jobs this might have?

**Mr Ball:** Yes, we can. The fact of the matter is it already has had an impact. People have lost confidence because of the recession. The situation we are in at present is that interest rates are lower than they have been in 20 years and likely mortgage rates will decline even more. We're in a situation where unemployment is higher than it has ever been. We're in a situation where you would think that we should be now moving out of this trough that

we've been in for a period of time and yet it's not happening.

I can't speak for anyone except the people we represent, the small business people. Small business people are terrified of the changes in this legislation, terrified of what the future holds, and consequently, any of those people who are in business are not expanding their businesses; they're not building new facilities; they're not hiring more people. What they're doing is they're standing still, hoping that the bank manager can be kept happy and that they can meet payroll. They're not expanding their businesses and they are not going to expand their businesses until they get a clear idea of what's going to happen to this legislation, irrespective of all the other factors that go to make up a decision in a businessman's head.

1420

**Mr Offer:** Do I have enough time for questions?

**The Chair:** Two minutes.

**Mr Offer:** Thank you. I'd like to carry on with your response on the point brought forward by my colleague. It seems that from your response, first, that it's self-evident there will be an impact and second, and I think very important, that an analysis as to what that impact may be has not been undertaken by the government, that you have not been sought out through whatever means possible to look at what the ramifications of this legislation may be to you and to the communities you find yourself in.

I'd like to get your comment on that and I do so looking at, strangely, a news release of the Minister of Industry, Trade and Technology in talking about the North American free trade agreement and basically saying that it cannot be implemented without consideration for the economic restructuring of a company's trade agreements, that you have to take a look at how it's going to affect manufacturers, new investment and increased competitiveness.

**The Chair:** Do you want to give these people time to respond?

**Mr Offer:** It seems that the position of the Minister of Industry, Trade and Technology for NAFTA is exactly—

**The Chair:** Do you want to respond, people? Go ahead.

**Mr Ball:** I'd like to respond to the first part, and that is that the impact is already: "Don't bother doing another analysis. The impact is now." There is no business expansion in Ontario, in my region, at the present time and there won't be. People are absolutely and unconditionally terrified not only about the changes in Bill 40, but now Mrs Grier is running around wanting to convert beautiful farm land into sanitary landfill sites. Add it up.

**Mrs Witmer:** Thank you very much for your presentation. Certainly, you've echoed some of the concerns I've heard from small business people in my own community. They simply don't feel they've been involved in the process that has led up to the development of Bill 40. Also, many of them are just now finally realizing the impact this bill can have on their very small mom-and-pop operation.

But the question I have for you, because you are in a very unique position, as you have pointed out, being in the

Oshawa and Ajax-Pickering area, is, what type of situation do you find yourselves in, in that particular area? As you've indicated, it is unique because of your dependence on a large plant. What's happening? What's the economic situation?

**Mr Robert Armstrong:** The economic situation as I see it in our area is that we have a large area of empty stores and empty office buildings, and we don't see any change. We've had a lot of vacant property. We don't see any development in our area at all at this time.

**Mr Emmink:** If I could just add to that, when you ask the question, "What's happening?" I think it could probably best be categorized as a total lack of any confidence in the future. That lack of confidence that we see resident in our businesses in the Ajax-Pickering and Oshawa areas I think has to affect the decision-making process for anyone who is thinking of investing in that area. Obviously, the reasons that are giving rise to that lack of confidence for the resident businesses have to be reasons that potential investors have to give very serious consideration to.

It's probably not stating the case too strongly to say that there is a sense of despair. To put across legislation of this nature without arguing specifically the merits—legislation which has a perception of having a potential for creating great damage from a timing point of view—is catastrophic.

**Mrs Witmer:** In the event, then, that Bill 40 were to pass in its present form—and I have to tell you I'm not terribly optimistic that we're going to see any substantive changes—what is the future impact going to be on your community? You've told me how you have these empty stores and there's a total lack of confidence, and unfortunately, if the small business sector is not creating new jobs, we're not seeing a lot of new job creation. What is the future potential of this bill?

**Mr Armstrong:** All I can see is doom and gloom. Maybe I'm wrong, but I can see small businesses going out of business. I can see them moving. We already hear of large industries moving to other areas, moving to the United States. I realize we just heard some good news—I'm glad to hear that—and of course we have General Motors, a large employer, in our area. To the small businessman, everything depends on what General Motors does, basically, because that's where our livelihood is. So I can think of things going down rapidly, I'm afraid.

**Mr Emmink:** Perhaps I could add one brief comment to that. It would be nice if this group could leave here today with some words of comfort from the government members that they will guarantee that this legislation, if passed in its present form, will not have a detrimental impact on our economy. If that guarantee is backed up by some kind of plan for financial compensation to the businesses and the families that are going to suffer economic hardship, if this government will make that kind of guarantee, I'd like to know what the nature of that guarantee would be.

**Mrs Witmer:** I guess that was my—

**Interjection:** Mr Hope has a question or a comment.

**The Chair:** Go ahead, Ms Witmer.

**Mrs Witmer:** I guess my final question to you would be, what would you ask of this government before you leave today? What request would you make? What would you like to see happen concerning Bill 40?

**Mr Armstrong:** I would like to see this government, as I'm sure you are doing, look at it seriously from the point of small business as well as of everyone else who's involved, and protect everybody's rights to the best of your ability so that we're all protected and we don't have horror stories down the road where we're all looking around and saying, "What happened?"

**Ms Kim Warburton:** I might also add, in terms of the members, that we've heard a lot about consultation, and consultation within the community. One of the things we would like to see, if it is possible, would be for this legislation to be reviewed more at a community level in concert with labour groups and with members of the community, chambers of commerce.

We keep going back to how there seems to be a lack of information. It may have been sent out; that's not really up for discussion. But the level of understanding is very poor in the community and we would like to see that change somewhat. Maybe this process could be slowed down, in terms of allowing an opportunity for further consultation in the community.

**Mrs Witmer:** That's a good point.

**The Chair:** We want to thank the Oshawa Chamber of Commerce for its participation in this process. You've played an important role and we're grateful to you. Thank you, people. Take care. Have a safe trip back home.

#### CANADIAN UNION OF PUBLIC EMPLOYEES, NATIONAL OFFICE

**The Chair:** The next participant is the CUPE National Office, if they would please come forward, have a seat, and tell us their names and titles, if any.

I want to remind people who are visiting that there's coffee available here over at the side. It's free and it's here so that you can make yourselves comfortable and at home. It's probably one of Toronto's best kept secrets that public committee rooms are the best single source of free coffee in the city.

**Interjection:** Does that mean we can have one?

**The Chair:** You sure can.

Please go ahead. Try to save at least the last 15 minutes for exchanges.

**Ms Judy Darcy:** Try and save at least the last 15 minutes for questions? We will do our best.

Let me start by conveying my thanks for granting standing to the Canadian Union of Public Employees to speak on what we consider to be a long-overdue piece of legislation. My name is Judy Darcy and I'm national president of CUPE, which, as you may or may not know, is the largest union in Canada, representing 410,000 workers from coast to coast in the public sector, including approximately 220,000 women in public services.

As you know only too well, Ontario labour laws have not been significantly amended, excluding some very minor



changes, for some 17 years. As we also know, a great deal has changed in the province in 17 years. Indeed, the workforce is changing very rapidly even in the last couple of years, and I'll return to that later.

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Since our time with you today is very short, I will also refer you to the formal brief that was submitted on behalf of the Ontario division of CUPE at your committee hearings on August 27 in Kingston. This document, which I'm sure you remember, is a more technical and detailed brief that details our position on a number of different aspects of the OLRA amendments.

I'm accompanied today by Muriel Collins, who is a member of CUPE Local 79, which represents inside workers in the city of Toronto, and is herself a worker from the homes for the aged. She also chairs our national task force on women and is a member of our national executive board representing southern Ontario.

This is Helena Aguiare, president of CUPE Local 2295, who represents building cleaners at the Toronto-Dominion Centre in downtown Toronto. With us also is Luis Aguiare, who will be translating for Helena when she addresses you later on.

They're here with me today so that together we will try and give you a picture in a few short minutes of what life is like in the real world, what it's like to be an immigrant woman working in a female job ghetto, what it's like to try to organize part-time workers under the province's existing labour laws, what it's like not just to try to organize a union but also to hold on to a union, hold on to basic rights for groups like cleaners without the successor rights provisions that will be afforded in the present law.

We make our presentation, as I said, on behalf of all of our members in Ontario, but we also make our presentations, we believe, on behalf of unorganized men and women and, in particular, on behalf of the most vulnerable and the most exploited people in the workforce: immigrant women, women of colour and part-time workers.

We've chosen to direct the thrust of our presentation today towards the effect these amendments will have on women workers in particular. Why do we do that? Because we believe that the real story behind these reforms and the story that has gone largely unreported and largely unnoticed, the one that the employer lobbies and the business lobbies, we believe, have done their best to obscure, is how these changes will affect and will benefit the most vulnerable members of our workforce: part-time workers, who are mostly women; immigrant workers in low-wage sectors, again mostly women, and people working in predominantly non-unionized settings such as the service sector, the retail sector and the financial sector, again mostly women.

I mentioned that our union is the largest union and that over half of our members are women, a fact that we believe can be attributed both to the unprecedented growth in the service sector in the last 15 years but also the growing recognition on the part of working women in the workforce that they need to have a union in order to improve their standard of living and in order to gain some measure of dignity and some measure of respect on the job.

It's no secret that these women—and in our case women who work in hospitals, in libraries, in nursing homes, in public utilities, municipal and regional governments, universities, social service agencies, child care centres and airline and broadcasting industries, as far as the federal sector is concerned, to name just a few—would still be earning 67 cents on the dollar compared to what men earn if it had not been for the fact that the union movement, together with the women's movement, had worked so hard for pay equity legislation and had worked so hard to achieve pay equity through collective bargaining. And even at that, there are many women who still are earning 67 cents on the dollar.

I think we all know that the Ontario workforce has changed dramatically over the last number of years. In the last 15 years, one million women have joined the workforce in Ontario. That's one million women since the Labour Relations Act last underwent major changes.

Part-time workers now make up 17% of the total labour force in Ontario. Women now make up 46% of the total labour force. Over the last 15 years there has been an increase of over one million workers in the service sector.

We think those are pretty conclusive statistics about the need for change and pretty conclusive statistics about how the workplace and the workforce are very different than they were a number of years ago.

We are not so naïve as to believe that these labour law amendments alone will mean that the problems facing working women will vanish. We see these reforms as part of a broader series of initiatives that are absolutely essential in combination to move us closer to economic and social justice for working men and women: programs such as pay equity, employment equity, advances in child care provisions and increased minimum wages. All of those measures together will go a long way towards improving the lives of working people.

A great deal has been said during this current debate over labour law reform about the so-called balance which now exists between employers and their unions; the delicate balance the business lobbies would have us believe has created what they refer to as a stable labour relations climate in this province, which, if tampered with, they say, would have devastating consequences.

Well, we have a group of 19 municipal employees in the city of Cornwall—and I know you heard from some of them a few days ago—who have been on strike for eight months while replacement workers are doing their jobs, and they would certainly beg to differ with that rosy description of current labour relations in this province. I would ask those business lobbies and employer lobbies to tell those workers who have lost their homes and who have suffered marriage breakdowns about the delicate balance those workers and their employers currently enjoy.

I would also ask the business lobby to say that to National flight attendants, who, even though they work in the federal sector, desperately need the same kinds of reforms that are being proposed here. We're talking about a group that has been locked out—not on strike but locked out—for nine long months, walking the picket line, trying to get

a basic collective agreement, who now earn, on average, \$15,600 a year.

We are here today to say that the much-talked-about balance is about as real as the level playing field which Brian Mulroney and the federal Tory government promised would come from entering into a free trade deal with the United States; and when it comes to working women, to immigrant women, to women of colour and to women in low-paid, insecure and part-time employment, the power imbalance that exists is even more staggering.

The fact is that there are countless examples—and we're going to present you with a couple of firsthand accounts today—of threats and intimidation and very real barriers working women now face when they try to form a union or when they try and hold on to a union. Typically, we're talking about women who have worked for years in minimum-wage jobs with little pay and with little, if any, benefits or protections, things that most of us in this room enjoy and certainly take for granted, protections and benefits, I might add, which none of us would have today if it weren't for the battles that were fought and won by working people and their unions down through the years.

I would also like to remind the committee that, contrary to the shrill rhetoric that is coming from the business lobbies lined up in opposition to the reforms, the primary objective of these amendments is simply to remove the many barriers that currently exist for thousands of workers across the province who have been marginalized under the current law.

While I'm at it, I'd also like to set the record straight about this issue: There is absolutely nothing in these proposals which would in any way force workers to join a union against their will. Workers still have to sign a union card. They still have to vote on certification. This has not changed, nor should it.

I'd like to touch just briefly on a few of the major proposed reforms that would most benefit the most vulnerable members of the workforce: immigrants, visible minorities, part-time workers and women.

The issue of consolidated bargaining units: Currently in Ontario, the smaller your workplace is, the less likely you are to be in a union. That's because, as we know, Ontario's labour laws were fashioned at a time when the world of the workforce was a very different place. It was primarily composed of men, working for the most part in resource and manufacturing-based industries, and as we know, those days are long gone. There is little in the way of regulation or protection for those employed in smaller service sector workplaces that's written into the province's labour laws.

We believe these labour reforms will involve a giant step forward in bridging the gap for those service sector workers by allowing the OLRB to combine two or more existing bargaining units of the same union and the same employer. Workers in predominantly female sectors, like child care centres, nursing homes and so on, will finally have access to the benefits that flow from true collective bargaining. They will no longer have to face the prospect of successfully organizing a union in one day care centre or nursing home, only to be cut off by their employer and

targeted for anti-union tactics while the company is free to pour massive resources into resisting further unionization. Part-time workers will now be able to consolidate with their full-time counterparts into one bargaining unit and receive the same benefits and the same protection, and we certainly applaud the proposed amendments in that area.

As far as organizing and certification are concerned, we welcome the improvements in that area which will make it a less intimidating and a less bureaucratic process. By ensuring that there will be quick hearings into alleged unfair labour practices and imposing strict time limits, by allowing picketing and organizing activity on so-called third-party property and by expanding the ministry's public education service, the government has made sure that all unorganized workers will have the opportunity to find out what their rights and obligations are.

We believe that under this new law, the now infamous Eaton's strike of 1985 might well have had a very different ending. As we know, during that very bitter dispute, workers were unable to carry out organizing or picketing activity in the very shopping malls in which they worked.

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All in all, these changes are aimed at eliminating the intimidation that is still used by employers to defeat organizing drives and to prevent workers from forming unions. History has certainly shown us that these tactics are used with the greatest success against immigrants, visible minorities and part-time workers, again the most vulnerable members of the workforce.

I want to talk for a minute about successor rights provisions, because these are some of the most significant amendments, I believe, and they've received very little attention in these hearings to date.

We are very acutely aware from our own experience—and Helena will speak about this in a minute—of the vulnerability that certain groups such as building cleaners, cafeteria workers and laundry workers in hospitals have experienced over the years in not having their jobs, wages, benefits and bargaining rights protected when their employer, a private contractor, changes, even if they continue to work at the same location.

I want to tell you the most recent example of this. This incident occurred with one of our hospital locals in the city of Ottawa. In July of this year, some 95 full-time unionized cleaners who had been working for the same contractor at Ottawa General Hospital, some of them for as long as 12 years, lost their jobs because the hospital changed contractors; 95 jobs were gone just like that. This is just the latest group of workers who have lost their jobs, their benefits or their union because of the glaring loophole in the successor rights provisions of the Labour Relations Act.

I was integrally involved in forming a committee back in 1985, called the Committee for Cleaners' Rights, that was prompted out of a situation that faced Helena's local at the Toronto-Dominion Centre when the cleaning contractor changed. Empire took over from Modern. People were thrown out the door. A certain number were rehired with greatly increased workloads, and these workers, who were then making \$6.50 an hour for light-duty work and



\$7.50 an hour for heavy-duty work, were forced to take major contract concessions and lost OHIP.

These people were working at barely above minimum wage, and I remember some people remarking at the time that the choice facing workers when they are confronted with concessions like this in collective bargaining at the same time that this tendering process is going on is basically between cancer or pneumonia, which isn't much of a choice.

We lobbied very hard starting back then for an amendment to the successor rights provisions. There was a private member's bill introduced by Bob Mackenzie, who was then the Labour critic, and we believe this reform is long overdue and will directly benefit groups like cleaners and cafeteria workers, who, I think anybody would have to agree, are among the most vulnerable people in the workforce in this province.

Anti-scab legislation: It's been called radical; it's been called highly controversial. Why? We're talking about prohibiting employers from using replacement workers during a strike or lockout when we're all very well aware that this provision has been in place in Quebec since the late 1970s, and it has not caused the mass exodus of capital predicted by the business community back then. On the contrary, a 1991 Quebec ministry of labour report put it this way: "Our observations show that the anti-strikebreaker law is considered to have been a key factor in reducing the number of drawn-out strikes."

As for the weakness in the replacement worker provisions, we feel there are a number. I will refer you to the brief we presented last week; we and several other groups—the OFL—have gone into considerably more detail about it. We think we need to simplify and clarify the provisions related to contracting out, and we think we need to define the rules surrounding the designation and use of essential services better, but I refer you to our technical brief on that matter.

My job would not be complete today if I didn't comment briefly on what I believe can only be described as a hysterical reaction by the business community to these important reforms. I believe that this debate, if you can call it that, has been characterized by a high level of rhetoric and fearmongering that in fact has even alienated some more prominent members of the business community.

What we're seeing is a heavily bankrolled propaganda campaign which, if nothing else, has shown us that the power brokers in this province—the banks, the insurance companies, the multinational corporations—are prepared to destroy the investment climate in this province in what we believe has become largely a symbolic fight with a democratically elected government.

More than that, though, this business lobby has not been content with just lashing out at the government. It has also launched a very vicious attack on the working men and women of this province, and in particular on the organizations these workers have chosen to represent them. They've tried to convince the public that unions are undemocratic and bad for the economy, and therefore that workers should not have the freedom to easily organize;

that unions want these changes because these changes are good for big union bosses.

As a woman who has come up through the ranks of Canada's biggest union and who was only recently elected president of a union that represents mainly low-paid women workers across this country, I'm here to tell you that is patently unfounded. There are few institutions in this country that are more democratic than unions. There are no organizations in this society that have fought as long and as hard for those people who are most vulnerable in our society, whether they're organized or whether they're not.

In conclusion, while we believe these amendments do not go far enough in a number of areas, we do still believe they are a bold and confident step forward for the province. They can make a real difference for the hundreds of thousands of Ontario workers, especially for low-paid women, for minority women, for workers of colour, for immigrant women.

As women, as trade unionists, as people concerned about basic economic justice, we have challenged the business community to come clean about its opposition to these reforms. We believe that its howls of protest, frankly, have far more to do with keeping women and men, and again the most vulnerable workers, in low-wage job ghettos rather than with legitimate concern for Ontario's future investment climate.

We're here today first and foremost to set the record straight, to say that these proposed labour law reforms are not about giving more power to big union bosses and certainly not even about giving more power to the relatively better-off unionized workers in the public or the private sector. These labour law reforms are first and foremost about giving long-overdue protection to the workers in this province who need it the most.

I'd like to ask Muriel Collins now to say a few words, and then after that, Helena Aguiar.

**Ms Muriel Collins:** As a member of the Canadian Union of Public Employees for the past 25 years, there's much that I have witnessed and many horror stories I could recount about the struggles working Canadian men and women face on a daily basis.

For the purpose of today's presentation, though, I'm going to concentrate on just one incident back in 1983. I was involved with CUPE Local 79 in what was to be a long and bitter fight to organize the part-time workers in Metropolitan Toronto's seven municipally run homes for the aged.

You may be wondering, "How many part-time workers could there be working in these homes? A hundred, a couple of hundred?" Would you believe it was close to 900? It may also be hard to believe that it was less than 10 short years ago that this very local became the first unionized group of part-time workers in the country.

We were faced with a situation in the homes where we basically had two classes of workers: The unionized full-time workers who enjoyed decent wages, benefits and job security, and non-unionized workers who enjoyed none of the above.

What this meant in the workplace for the residents of the homes was a dramatically high turnover of what were then called casual staff, many of them racial minorities and immigrant women who were being forced to live from day to day never knowing if they still had a job next week. For many of them, the uncertainty was too much and they moved on.

When we finally decided to organize these workers, we could not meet or talk to them anywhere near the workplace. We were forced to meet them in restaurants, at bus stops and so on. Many of the workers had been threatened with termination if they were seen talking with a union organizer such as myself. But we persevered and we were successful in getting the percentage of union cards signed. That turned out to be the easy part.

What followed was a full year spent at the bargaining table trying to negotiate a first contract, with the employer using all the stalling tactics in the book. Then we spent another two years going to an arbitration board. Two years these workers waited for their first contract after exercising their democratic right to form a union.

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What has it meant for these part-time workers in homes for the aged? They have now moved a lot closer to having full equality with their full-time counterparts. They're by no means all the way there, but they're closer and they now have a level of job security which they had only dreamed of. More than anything, though, this unionization has stabilized the workforce in the homes, which now number 10 across Metropolitan Toronto. It has radically reduced the staff turnover rates, so the workers have benefited, but the residents have benefited in a big way and the employer has also benefited.

Looking back to 1983 and that organizing drive, I believe I can speak for those workers when I say all the headaches, all the intimidation and disruptions in their lives were worth it, because we were able to improve the quality of life for 900 working women and men. I thank you.

**Ms Darcy:** Helena Aguiare would like to say a few words about the successor rights issue for cleaners.

**Mrs Helena Aguiare:** In Portuguese.

**Ms Darcy:** Yes, in Portuguese, and we'll have translation.

**Mr Luis Aguiare:** Mrs Aguiare has worked in the cleaning industry for 20 years. She works at the Toronto-Dominion Centre downtown. She's been the local president since 1985, and the case that she's talking about happened in 1985, when Modern lost the contract to Empire, and as a consequence the employees were let go by the new contractor.

They engaged in a struggle in 1985 to make sure that workers were recognized by the new employer and with a union, but only 50 of over 200 workers were retained by the new contractor. The workers were able to retain the union; however, they lost many benefits, including OHIP.

Since 1985, every time they go into negotiations they always have in the back of their minds this situation, because they are afraid that the current employer they have

will lose the contract and as a consequence they will lose their union and their rights.

Helena urges this committee and the government to implement a clause within the labour law that will guarantee successor rights so they will not face this situation again.

**The Chair:** We have two minutes per caucus.

**Mr McGuinty:** Thank you for your presentation. It's unfortunate we have so little time to discuss it further with you. One of you made an eloquent case on behalf of bringing about some kind of significant improvement to the organizing process to ensure that the rights of workers are respected.

I'm going to outline for you just briefly a process and I'd like to get your impressions of that. Union organizers would be required to obtain 20% or 30% signed cards only and there would be no requirement for a membership fee; that would be waived. The board would then notify the employer that there's an organizing drive under way. The board would obtain names and addresses of employees and provide them to the organizers. The board would supply standard information to the employees to let them know their rights and at the end of the day there would be a secret ballot.

**Ms Darcy:** I'm sorry, I missed the very first part of what you said and I'm not sure whose position you're stating or what question you're asking.

**Mr McGuinty:** I'm just outlining a theoretical process which might be used as part of the real-day organizing in order to clean up the process. One of the complaints we contend with here regularly is that workers are buffeted about by larger forces, they don't know who to believe, they're intimidated by the employers, there's coercion and there's threat of loss of work. We're trying to bring in an impartial third party who advises workers of their rights and allows for a secret ballot at the end of the day.

**Ms Darcy:** With all respect, we're not dealing with a theoretical problem. Those of us making our presentation today are very practical people. The reality our members face and the reality unorganized people face is tremendous barriers to organizing. I think what we're trying to do today is not to engage in a technical debate or a theoretical debate but to impress upon you the human face of this problem.

A great deal has been said about theoretical problems and about what may happen as far as the investment climate in the future is concerned. We believe, and what we're trying to say is, that the real story behind these reforms and the real story that we ask and that we implore all parties in the House to come to terms with is the conditions and the threats and the barriers that are faced by working women and by working men in this province.

I'm really not in a position to deal with theoretical issues. I don't think we're talking about a question of theory; we're talking about basic economic and social justice for working people.

**Mr Turnbull:** Two very quick questions and simple answers, please. Under the provision that allows security guards to belong to the same union, albeit different



bargaining units, if those security guards were to go out in sympathy or not cross picket lines, who do you imagine would be responsible for public safety in that issue?

**Ms Darcy:** I have to say that security guards are not a group that we presently represent or are involved in organizing. There are other organizations who have come before you, namely, the Ontario Federation of Labour and the Steelworkers union, who have addressed that issue in considerable detail. I'm not in a position to respond to that at this time.

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**Mr Turnbull:** Very well. The other question I have is, in view of the fact that you're using Quebec as the example of having anti-scab legislation for a long time and you're holding it up as a paragon, are you aware of the fact that Quebec has approximately double the number of workers on average per year that Ontario has on strike, even though it has a significantly smaller population?

**Ms Darcy:** I think it makes much more sense to look back at what the labour relations climate was in Quebec prior to the introduction of anti-scab legislation, because in fact the statistics on strikes will bear out—I don't have them here. I could certainly forward them to you if you haven't been presented them by anyone else.

**Mr Turnbull:** But why use Quebec as an example when it's got a worse track record?

**Ms Darcy:** Why? Because we're talking about—

**The Chair:** Mr Turnbull, I'm indifferent, as I've said before, as to how many people talk at the same time, but the people up there doing the translating and the people from Hansard are grossly inconvenienced. So please go ahead, Ms Darcy.

**Ms Darcy:** Thank you. I think what we're saying is that the experience of the labour relations climate in Quebec showed that after the introduction of anti-scab legislation, the number of people-days lost to strikes, and in particular the number of long-drawn-out strikes, was significantly reduced. The fact that we already have a better labour relations climate in this province I think simply indicates that with the introduction of legislation like this, we will see an improvement in the labour relations climate and probably a decline in the number of strikes.

**Mr Turnbull:** I have to suggest exactly that. We've never had that kind of labour climate. We've had very enlightened labour legislation that was brought in many years ago by the Conservatives, and consequently we have not had those conditions that prevailed in Quebec, and we still have a much better track record than Quebec in terms of strike-days lost.

**Ms Darcy:** I would suggest to you with respect, sir, that if you look at a situation such as the municipal employees in Cornwall, if you look at the kind of situation that was faced by both these two women in their personal organizing experiences, their personal experiences in the workforce, you would see that yes, while the labour relations climate is significantly better than in Quebec, we have a long way to go to protect the people who are most vulnerable and who most need protection.

**Mr Huget:** I thank all of you for your presentation. I'd like to just focus on the building cleaner issue. If I understand you properly, I guess what you're saying is that a person in that occupation could be working for an employer for 10 years or 15 years as a cleaner, and simply because of a change in the contractor—and indeed that person would likely be the same person to go back to work for the new contractor—in that process he loses his agreed-to salary, he loses his benefits and he loses any seniority. In fact, they lose all the way around.

Mr Turnbull's party is one that has said these changes aren't necessary at all. The opposition groups to the changes in the legislation say now is not the time. I think your issue in terms of the cleaners is a significant issue, if you could expand on that and tell me whether that's the norm or the exception. How widespread a problem is this?

**Ms Darcy:** I'd be happy to get some copies of clippings to you and forward them to the committee. Over the years we compiled a number of stories, a number of specific situations we were involved in, in trying to protect the workers. There are eight or 10 that I was personally involved in, in the period from 1985 to 1989 in the city of Toronto alone, so there are probably many more throughout the province that went unreported.

In situation after situation, it was a matter of the tendering process following through. More often than not, it happened at the same time that collective bargaining was under way, if we were talking about unionized workers. So you had a situation of workers, in fear of losing their jobs, being forced to accept takeaways or concessions when they were already barely above minimum wage.

As Helena said in the case of the Toronto-Dominion cleaners, they lost their OHIP, which is a very big blow for people then earning \$6.50 an hour. In several of these situations, all the workers lost their jobs and they all had to reapply for their jobs one by one. It was strictly up to the new contractor whether it wanted to hire them, whether it decided to respect seniority—in most cases it did not—and in many cases the workload increased. The situation I just referred you to, the Ottawa General Hospital example, is just the most recent of those.

There are already successor rights provisions, as you know, but there is a glaring loophole in them that means that people who are employed by a private contractor are not protected by them. Some think this is long overdue, and we think, frankly, that closing that loophole will not only afford better protection to the workers who are presently organized, but I hope it will also encourage people to seek the benefits of a union, because very often what happens is that unionized employees are thrown out in favour of a non-union contractor.

**The Chair:** I want to say thank you to CUPE and to you, Ms Darcy, as president; equally, however, to Ms Collins and Ms Aguiare for coming here today and sharing as they did with us, and to you, Mr Aguiare, for your assistance. The committee is grateful to you for what has been an important and valuable contribution to this process. You've provided some unique and important insights. Take care.

## DOFASCO INC

**The Chair:** The next participant is Dofasco Inc. Please come forward, have a seat, tell us your names. The written material has been distributed. We have Peter Earle and Bob Swenor. Go ahead, gentlemen. Tell us which of you is which and proceed with your comments.

**Mr Robert J. Swenor:** I'm Bob Swenor, senior vice-president, corporate administration. Peter Earle is the director of public affairs. We don't seem to have a committee any more.

**Interjection:** It's lonely over here.

**Mr Swenor:** We appreciate the opportunity to make a submission before this committee on Bill 40. We'll address three main issues.

Going back to the previous presenters, there is no black and white in this; there's only grey. But we will not try to be hysterical.

Three main issues: The first will focus on the process that's led up to Bill 40. We'll then discuss just a few of the specific proposals set out in the bill and our concerns with them. Finally, we're going to talk about competitiveness, which is really the issue behind all issues, and what it means for us as a company, for our customers and for the province.

As you may be aware, Dofasco has participated actively in the consultation process leading up to Bill 40. We made a presentation to the Minister of Labour in Hamilton in January, as well as submitting a written brief. I think we have some limited copies of that brief available.

Dofasco is also an active member of the More Jobs Coalition, along with two coalitions that represent virtually all the business organizations across the province. I want to make it clear that we have participated actively in the process, not because we are a non-union company, but because we believe this is a critical issue for us, our customers and the province as a whole.

As a large, Ontario-based company in an industry that is a significant part of the manufacturing fabric of this province, we have felt that we have had to participate in the process in a meaningful way. Having said that, the process leading up to Bill 40 has been an extremely frustrating and disappointing one that has heightened, rather than reduced, mistrust and tension between employers and unions. To understand why we say this, let's just review the process briefly.

It began in 1991 with the Burkett report. The Burkett commission was a bipartite commission, and at the end of it there was virtually no consensus on the 30 general areas that they were given to review, all of which represented the union agenda. The business community expressed serious concern with the process.

The next step was that there was a leaked cabinet submission prepared by the Ministry of Labour which discussed, among other things, the plan to "neutralize" opposition from the business community. The government tried to distance itself from this document, stating that it did not represent government policy. It was followed by a discussion paper released in November 1991, with a deadline for submissions of February 1992.

While the government was willing to meet with business and other groups to discuss the proposals, the February deadline was rigid. There were numerous meetings and submissions made throughout this period, but in reality, and contrary to what the government has stated, the process was virtually one way. Not only was this frustrating; it was unnecessary.

Having lived through the process both as a company and as part of a broad-based group, we do not understand why, on an issue as sensitive and complex as labour relations reform, knowledgeable people from all the interested parties were not brought together to come to a common understanding of the need for changes and to find creative solutions that balance the interests of all the parties. For whatever reason, the government chose an approach that locked one of the parties out of any meaningful part of the process.

The results of this unfortunate process are reflected in Bill 40. The Minister of Labour indicated that over 20 changes were made to the original proposals. The number of original proposals were overwhelming. Starting with a large number and then cutting back does not mean there was compromise or movement. Moreover, this numbers game does not necessarily mean that the changes were substantive. In fact, many were more apparent than real.

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We heard from at least one minister near the beginning of the consultation process that, while the government was prepared to entertain alternative proposals, there would be little opportunity for anything but minor changes. In our view, the consultation process was for public consumption, including the January hearing process. The thrust of the changes remains the same, to fundamentally alter the balance of power in this province in favour of the unions.

The minister, after some consultation, stated he was shocked that only the union presentations were being positive. In my mind, the process is analogous to my taking two of my sons—I have three—who have equal wealth of \$1,000 and saying, "Joel, of your \$1,000, I want to give \$700 to Jason; he says he needs it, but we'll talk about it," and then saying to Joel: "I'm shocked that only Jason is being positive in these talks. Why aren't you positive? He says he needs this money, but we've cut it to \$500 and you're still not positive." That was the consultation process.

I'd like now to briefly highlight a few of the specific proposals in Bill 40 that raise serious policy concerns from our perspective. This is certainly not an exhaustive list, but in the time allotted, it will give you some idea of the serious issues we see raised in the bill.

The first area is the proposed changes to the certification process. The Minister of Labour spoke of the bill as plotting "a course for a more open workplace, one which is more responsive and democratic." It is difficult to understand what could be more democratic in ascertaining the true wishes of employees in the certification process than a government-supervised secret ballot vote.

Currently, a union is under no obligation to inform prospective members of the effect of signing a union card, of the union constitution, or to explain dues or duties.



Employers, on the other hand, must be extremely careful in what they may or may not say.

Bill 40 even further limits the ability to communicate with employees so that they may have the fullest opportunity to make their decision with all the facts presented. It shifts the emphasis in an organizing campaign from distilling the true wishes of employees to facilitating trade union certification. Under the bill, petitions or other membership evidence that an employee has changed his or her mind about support for the union after the union has filed its application for certification are eliminated. By the time news of the organizing campaign reaches the employer, all admissible membership evidence is in the board's possession. At a time when critical decisions are being made, the union organizer is the only source of information.

I spent six years as a part-time member of the Ontario Labour Relations Board. During that time, I saw petitioners being grilled by union lawyers and by union sidemen to ensure there was no employer input or influence into their petition. Under current law and practice, petitioners are not given an easy time in demonstrating that the petition is independent.

One incident, however, stands out in my mind. It's worth passing on to this committee and is pertinent to this discussion. A petitioner who had signed a union card and had then initiated a petition was asked why he signed a union card in the first place. His answer was that he was invited to a union meeting at a coworker's recreation room. He went there, and he said, "Quite frankly, I didn't think I could leave without signing a union card." Whether or not there was real coercion, he felt there was coercion and he felt he could not leave that room without signing a card.

What this bill does is take away from him his right to change his mind after careful, individual reflection on whether he made the right decision to sign that card.

The best foundation for a high-trust relationship between an employer and union is for everyone concerned to be convinced that the union represents and has the true support of a majority of employees. A government-supervised secret ballot vote would provide that proof. I realize that's something that's in a direct opposite direction from what the government is proposing in this legislation, but it really is something that is in the US and that we should think about. It would also solve many of the procedural problems the government has identified. Petitions would become unnecessary. The dollar fee would be irrelevant. Difficulties in reaching first-contract agreements would greatly diminish.

Instead, Bill 40 proposes to abolish petitions, which are currently the only way to register a change of mind in order to get a vote. Its solution to the perceived difficulties of reaching a first contract is to allow automatic access to the first-contract arbitration upon application 30 days after the parties enter into a lawful strike or lockout position. This would permit trade unions involved in the negotiation of a first collective agreement to essentially bypass collective bargaining, thereby removing the incentive to take anything but intransigent positions when negotiating a first collective agreement. First-contract negotiations, once

considered the true test of employee support for the union under our certification process, will become an empty exercise.

Bill 40's provisions concerning the use of replacement workers is another example of policy that we believe will have the opposite effect of the stated goals. Far from discouraging strikes and the animosity that can accompany work stoppages, these provisions will prolong them. Restricting the ability of an employer to operate during a strike will encourage the use of this as an economic weapon.

In Quebec, where similar legislation has been in place for over a decade, it has not contributed to economic progress or industrial stability. Businesses in Quebec—and I recognize that this is in contravention to your last presenters—have found alternative sources of production and have either left the province or come to rely less on the manufacturing capacity within Quebec.

Employers entering a bargaining year in Quebec are driven by the legislation to concentrate on strike survival strategies. For example, they're stockpiling, engaging outside contractors, increasing production outside the province etc. Once the strike arrives, many businesses are prepared for a long siege. As the statistics indicate, the Quebec legislation has contributed to longer, not shorter disputes.

The government has, in our opinion, failed to prove in any meaningful way the need for these and any other changes. The changes as proposed will essentially enhance the power of unions, rather than the rights of individuals to choose to be unionized or not. They are much more likely to undermine rather than foster cooperative relationships because one of the parties will have lost confidence in the balance within the legislative framework.

Furthermore, they are out of step with the economic realities facing Ontario. Perhaps we've become somewhat numb to the argument that Ontario is now part of a global economy and that we must be competitive. However, it keeps being repeated, because competitiveness is the dominant reality facing us in the private sector.

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In our January 1992 submission to the Minister of Labour, we indicated that in 1991 Dofasco saw over 52 steel customers, representing 7% of our market, close down or relocate. Since that time, the number has increased to 66 companies, representing about 10% of our traditional markets. This is a permanent, not a temporary loss of business and is in addition to the general drop in demand due to the recession.

We're working very hard to restructure and to retain our competitiveness in the world marketplace. However, we and the rest of Ontario's industrial base desperately need policies that make us more, not less competitive.

I'd like to draw your attention to one example. It really is just one example and it's not on point with respect to these hearings. But Ontario Hydro, which was created to support a competitive economic infrastructure, now has costs that are higher than in many other jurisdictions in North America and is talking about further annual cost increases of 8% to 10% over the next three years. For

Dofasco, this means an increase in electricity costs of about \$30 million to \$50 million.

This is given by way of example of the competitive issues that industry is facing. It comes at a time when the price of steel has dropped to the level it was at 10 years ago. We're still looking at drops in real dollars of 4% per year compounded over the next three to five years. Obviously, our cost structure has not dropped along with the price decreases. Furthermore, prices are predicted to remain well below traditional levels in the future.

At a time of severe competitive pressures, when most businesses are struggling to survive, the province has never witnessed such energy and time being taken by the business community to work to address these labour relations issues. It's not a case of business simply being self-serving. We don't have the luxury of time to do that.

It's in the best interests of everyone—businesses, unions, employees, citizens—to have a healthy and growing economy. The only route to this is through education, technological expenditures, capital investment and being more productive. These proposals are the wrong policy direction at the wrong time.

I'd like to reference a recently submitted document prepared by the law firm of Heenan Blaikie in consultation with 10 senior industrial relations practitioners from a cross-section of business organizations. It's an excellent, thoughtful analysis of Bill 40. We urge you to review it carefully. It points out the critical need, in an area as broadly significant as labour relations, for further discussion. This issue demands that we sit down together now to seek the creative solutions we all need.

I'd urge this committee to not report on this bill until it has found a way to accomplish this. In our view, the best report would be to recommend to the government that the parties be brought together in a constructive way to develop these solutions. There has been no consultation. We need consultation and we need to talk about needs, issues and philosophy before solutions are brought forward and put in the form of a bill.

**The Vice-Chair (Mr Bob Huget):** Thank you, sir. Questions? Mrs Witmer and Mr Turnbull; about three and a half minutes.

**Mrs Witmer:** Thank you very much for your presentation, and we know that you have an excellent record of employee relations.

You've indicated here that you have lost customers. You've indicated that you have lost 66 companies. Obviously, it's been necessary for your company to downsize. I'd like to ask you: How have you done this and what impact has it had on your employees?

**Mr Swenor:** In 1989 we had a peak of about 12,000 employees. We did an early retirement plan in 1991 and through normal attrition we got down to 10,000. We just did another early retirement plan—

**Interjection:** Voluntary?

**Mr Swenor:** It's voluntary, yes, and very generous.

We probably will be down to about 8,400 this year. Competitive pressures probably dictate that we have to get down to 6,000 people from 12,000. We are going to try to

do this in the best way for our people, and we will do it in a voluntary way as long as we can and as long as we can afford it. We always want to have people leaving with a smile on their face.

**Mr Turnbull:** My question relates to first-contract arbitration after just 30 days. I recognize that you're not a unionized shop, but let's just look at the situation with respect to Algoma. It's my understanding—and please correct me if I'm wrong—that had the union accepted the terms of the contract you had offered in Algoma some 18 months before it went bust and you walked away from it, you probably would still be operating the company today. However, the union ignored the economic reality and just pushed ahead. Does it concern you that there is no wording in this legislation to direct any arbitration board to take consideration of the economic circumstances of the company?

**Mr Swenor:** It certainly does. First-contract arbitration—I'm not sure the Algoma example is on point because it was not first-contract arbitration.

**Mr Turnbull:** I realize it wasn't first contract, but that isn't—

**Mr Swenor:** Having said that, the Steelworkers, despite their denial, were presented with the economic facts and there was a broader agenda. That was the Stelco agreement and Algoma went on strike. They were on the verge of bankruptcy. We have written Algoma off, but Algoma has a very difficult time and there's no doubt that the strike of 90 days contributed significantly to that downfall.

**Mr Ward:** I'd like to point out some information that I think would be appropriate for you and I'd like to thank you for your presentation.

Back in the spring, it's my understanding that the Minister of Labour, Bob Mackenzie, and his very capable parliamentary assistant, Sharon Murdock, went throughout the province and listened to over 300 groups, organizations and individuals talk about the discussion paper.

During that time I also met with businesses in my own community of Brantford. There were concerns other than replacement workers, which is a general concern from the business standpoint, but their prime concerns dealt with the possibility of supervisors being allowed to organize, access to employee lists, the ability of union organizers to be on company property during an organizing drive and some concern with the original wording of the proposed purpose clause.

It seems to me that during that consultation the Ministry of Labour listened to what the business community said because, lo and behold, when Bill 40 was presented to the House, the supervisors were still exempt, there was no access on company property for union organizers, there was no access to employee lists and it's my understanding that the wording was changed in the purpose clause to deal with some of the concerns the business community had. In my mind, that's actually listening to what was presented during the original consultation.

You mentioned Quebec and you said you have statistics. The statistics that have been presented, and I guess we could use both, were that in fact the days lost due to strikes when compared to the overall days of work in Quebec



have been reduced by 30% since the legislation was introduced and that the representative of Quebec's major employer, when it made the decision to drop the challenge to the charter on the replacement worker restriction in Quebec, cited the stability of Quebec's labour relations climate as the major reason for this decision. I just wanted to make that clear in case you weren't aware of that information, and you may not have been.

1530

Dofasco is a good, corporate citizen and treats its employees very well. In fact, some of my friends who work at Dofasco still talk about the Dofasco Christmas party. But all employers aren't as enlightened as Dofasco and there are some employers out there whose employees feel the need to be organized, to have a trade union represent them. Under the existing act we're hearing mounting evidence of obstacles in the way of employees pursuing that wish or that direction.

Why do you at Dofasco, enlightened as you are, from a management standpoint, in your treatment of your employees—and you'll never be unionized—feel it's necessary to have those obstacles remain in place for employers who aren't as enlightened as yourselves and whose employees feel the need, for whatever reason, to have a trade union represent them?

**Mr Swenor:** I agree with you. We don't feel in great danger of being unionized. We enjoy the philosophy of our forefathers, who believed in treating people well.

**Mr Ward:** You still have those commercials, do you not?

**Mr Swenor:** No, it's not a problem for us. But as I said earlier, I sat on the labour relations board for six years and I believe there are not really many impediments to unionizing. I think this has thrown the balance of power to ensure unionization, despite what the true wishes of the worker might be, into place. I mean, people will get unionized whether they want to be or not, whether the employer's bad or not.

I feel somewhat disadvantaged in having come after the group we came after, because there is no black and white; as I said earlier, there is grey. Probably the black and white comes, as you said, with us and with the cleaning workers. I feel, though, that when you try to deal with the black and white through a legislative process, you're really hitting a gnat with a sledgehammer and you'll deal with a lot more than you thought you'd deal with.

The real issues with us are competitiveness, our customers and having customers here. People, don't be disillusioned: Capital is very fickle. It will go where it can get its best return. If they perceive that there is some competitive disadvantage—I used Ontario Hydro as an example, but we have a number of other things—we have enough in Ontario now to disadvantage us from the point of view of investment. One more thing will not help. We need customers. We have no threat of getting up and moving to the US. We have a big plant; we can't move to the US.

But if our customers move to the US, we are dead. We're going to die. They are moving to the US. One of the things I've heard, in the reply of the government to some

criticism of the bill, is that the same provisions are in place in Saskatchewan or Manitoba or Quebec or wherever. We're not losing business to Manitoba, Saskatchewan or Quebec; it's going south. I'm not talking about the Sunbelt states and the low labour-rate states; I'm talking about Ohio and Michigan and Illinois and states which are fighting over businesses, giving free tax relief for 10 years and giving all kinds of assurances.

We don't need further negative investment. We're here. We're going to stay here. We want to do business here. As you say, we want to do business in the way that we've done it, but we have to have customers, and the customers are leaving.

**Mr Phillips:** Thank you for your presentation. One observation on a comment made by my colleagues over here: Our view of how the government operates in these things is—it's almost like collective bargaining—to put an extreme position out and back off on two or three things you planned to back off on from the start anyway. So I don't view what the government did as any significant backoff on its bill. That's an observation.

**Mr Hope:** Have you ever been on our side?

**Mr Phillips:** Yes, I have. You guys aren't alone on the side, believe me. You guys don't understand where other people come from.

**The Vice-Chair:** Order, please.

**Mr Phillips:** And you don't have a monopoly on union activity, you really don't. I'm sorry to tell you that, but you're going to have to learn that.

But back to you, sir. You bring a unique position to us, and that's your experience on the Ontario Labour Relations Board. I wouldn't mind, even though it's not in your brief, if you could give us any insight on the purpose clause and whether you've had a chance to look at the purpose clause and, I guess, wearing your hat as a former member of the Ontario Labour Relations Board, whether that would cause the labour relations board to act in any different way than it has to date.

**Mr Swenor:** There's no doubt in my mind that the board will have to try to give some constructive meaning to the purpose clause. They have before. If you look at the jurisprudence in the board, they have given meaning to the purpose clause before, and they will have to give more meaning to the changed purpose clause, there's no doubt in my mind. I guess I can't really say more than that.

The main difficulty with business and the purpose clause is that it talks about improving conditions and the board will look at collective agreements as having to improve. The reality of today is that we may have to look at concessions. It really is the reality of today. We're competing with people who have higher productivity or lower costs, and together we have to work towards being competitive. If we don't look at concessions, we may have to look at staying the same, but improvements may be out of the question. The purpose clause will direct the board to look at collective agreements to having to improve conditions.

**Mr Phillips:** Can I follow up with that?

**The Vice-Chair:** Very briefly, Mr Phillips. We are already significantly behind here.

**Mr Phillips:** Is it possible that one could be charged with bad-faith bargaining if one was to pursue a contract that could be construed as not having improved the conditions?

**Mr Swenor:** I believe so, and I believe the purpose clause will drive the board towards that conclusion.

**The Vice-Chair:** I'd like to thank Dofasco for its presentation and both of you for taking the time to appear today and express those views.

#### OAKVILLE CHAMBER OF COMMERCE

**The Vice-Chair:** The next group is the Oakville Chamber of Commerce. Could you both identify yourselves and then proceed with your presentation. You're allocated a half-hour, and I know that all members of the committee would appreciate some time for questions and answers, so if you could leave some of that time for that dialogue, we'd appreciate it.

**Mr John Hogg:** My name is John Hogg. I'm president of the Oakville chamber, and beside me is Jackie Cutmore. She's our executive vice-president and has worked for the chamber for the past five or six years. She made a presentation back in February, which you people will get a copy of, and also a copy of the presentation that we're about to deliver this afternoon.

**Mrs Jackie Cutmore:** I had the pleasure actually of making my presentation on February 7 in front of the MPP from Sudbury and I acknowledge that. I almost thought I was going to have the pleasure of making my presentation in front of you again, until you moved.

I did think, and I apologize, that I was making the presentation to the minister. I'm not going to change it, lest I lose my train of thought as I read, if you don't mind, because we only learned yesterday at 11:30 that we were making this presentation today.

My name is Jackie Cutmore. I am executive vice-president of the Oakville Chamber of Commerce, which represents 1,000 member companies in Oakville.

Our chamber has made it a point to be informed and involved in the legislation. If you recall, Mr Minister, you spoke in Oakville on the act and the proposed changes in December, where we had a panel which consisted of business, labour and government. Since then, we have followed the lead of the Ontario Chamber of Commerce and joined with many chambers of commerce and boards of trade across Ontario in expressing our strong opposition to a great many points in your proposal and the process, which really limits the democratic right to be heard.

It is not the intention of the Oakville Chamber of Commerce to create barriers between business and labour, but rather we seek to avoid this path to confrontation, which we feel is almost evident in Bill 40. Please listen to what we are saying.

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First of all, I would like to thank you for the opportunity to present our concerns regarding the proposed changes to the Ontario Labour Relations Act. I especially

would like to thank our MPP for Oakville South, Gary Carr, for his assistance in getting me here. I would also like to thank Steve Offer for his presentation in Oakville on Monday morning at 7:30 with Barbara Sullivan, which we also attended.

The Ontario government is deeply entrenched on a course of self-destruction in an attempt to appease a vocal minority. The proposed changes to the OLRA fail to recognize that businesses are not establishments of the government but rather investments owned by individuals and/or stockholders; they can flourish or they can simply fade away, especially in this economy.

As we review the legislation, we note that in the purpose clause there is a statement that says "promote harmonious labour relations." Legislation aimed at reducing the power and autonomy of business and increasing employee power to strike is not one of the ways to promote this harmonious relationship. In fact, this legislation will distinctly project a them-against-us attitude that will certainly not promote harmonious relationships.

The minister also advises us that workplaces are changing, and we can agree with that. These places are getting fewer and farther between. Businesses are closing; employees are being laid off or let go entirely; expenses are being kept to a minimum. Owners are the employees in some instances. One only has to look at the GM situation to understand what I am saying.

The minister also tells us that the economy is undergoing fundamental structural changes. How can somebody recognize the real situation so well and not understand what it means? People are not spending because they do not have jobs. They do not have jobs because business cannot afford to be here. House prices, interest rates and mortgage rates are at an all-time low and still people are not buying because they are not sure they will have a job tomorrow.

Mr Minister, perhaps you could explain what sort of contribution to economic renewal the working people will make when business gets fed up and folds and they don't have jobs. If indeed the goal is to promote more dialogue, discussion and problem-solving between workers and employees, then why is legislation required? Mr Minister, you asked us to assess this legislation with an open mind. Does this work in two ways? Are you keeping an open mind when we make our concerns known to you? I don't know who's kidding whom at this point, but I will continue.

There are other concerns we have—mainly, the automatic certification when 55% of a company's workforce sign a union card. This is a substantial abuse of the personal rights of workers to make a sober, informed decision about unionization which the OLRA proposals do not address. The proposals do not even pretend to take into account the pressure workers come under from union organizers to sign up, or to ensure that workers are given all possible information to make an informed choice. The \$1 financial requirement that workers presently have to make in order to join a union has even been removed.

This government is infringing on the personal right of workers to choice, and of employees, both for and against unionization, to present their arguments to fellow workers.



Automatic certification will continue to poison the workplace atmosphere at a time when employees and their employers should be reaching out to each other in a spirit of cooperation and understanding in order to effectively compete in the global economy and protect jobs.

In researching information and important data for this presentation, I found the following, which are taken from credible presentations made earlier.

"Ontario statistics indicate that 96% of contract negotiations reach settlements without strike action or lockout. Only 4% of all collective agreements end in strike situations and job interruptions, and picket line violence has significantly dropped over the last 10 years."

Here is another quote: "In the last 12 years, the province of Quebec,"—which I realize we have flogged to death today—"which is often cited by this government as having good labour relations, has had more strikes involving double the number of workers than Ontario. Mr Mackenzie has quoted in a report to cabinet that implementing the OLRA changes will cost \$8.3 million over three years and require an additional 55 civil servants."

This is another quote that actually comes from Oakville: "That plant should have gone and could have gone in Ontario but, to be honest, the business environment is much more attractive in the US." That's the president and CEO of a firm in Oakville on a recent decision to build its new plant, expected to employ 200 people, in Michigan.

This last quote really does prove my next statement: "Money or capital are extremely mobile. Don't encourage business to show you how mobile."

To say that the OLRA does not need changing would be folly, but introducing such sweeping, one-sided proposals is economic madness. What we, business and the province, need is a true consultation process that works. This means breaking through the barriers of hostility and mutual distrust between government, labour and business, and having all stakeholders sit down to understand the needs of all parties and see if we cannot find common ground.

The current proposals are not the answer. The government must see that significantly altering the balance of labour relations is counterproductive to fostering economic cooperation between government, labour and business, and that it is also dangerous to the economic health of Ontario.

Most of all, we would ask you to recognize the need for business, labour and government to communicate and discuss those things which are fundamental to making Ontario a more prosperous place to do business and a better place in which to live and work. In order to do this, remember, changes in attitudes and practices will be required on all sides—yours too, Mr Minister. It is imperative that your government recognize the fundamentals of good relationships. They cannot be legislated, but they can be built on trust and respect.

In a letter to the Oakville Chamber of Commerce the Premier says:

"Our government understands there must be a marriage and an understanding between the interests of business, labour and government. We are trying to create the conditions which will allow labour, business and government to

work together for positive and progressive changes. This will require changes in attitudes and in practices on all sides."

Mr Minister, we do not feel you have understood the Premier's direction. If you had, you would have arranged discussions with all labour market partner sectors to see what all had to say and made your proposed changes accordingly.

Mr Minister and members of the committee, I appeal to your common sense to listen to the comments you are hearing from business and to recognize that businesses are the engine of economic recovery and the creators of jobs. Recognize that without business there are no employees, unionized or non-unionized, there is no spending and there is no revenue being received by governments.

Thank you for the opportunity to be one of approximately 240 of over 2,000 requests to be heard. I hope, Mr Minister, businesses all over Ontario will not have to close their doors for a few days for you to understand the impact of "no business—no jobs."

**The Vice-Chair:** Thank you very much.

**Mr Hope:** I listened to your presentation and, representing a chamber, I guess your interests are of the small business community group mainly.

**Mrs Cutmore:** We have Ford and Menasco and quite a few larger ones, so I'd say we are not strictly small. I would like to think we are approaching a wide range.

**Mr Hope:** But you represent the voice of united small business groups whose concerns you're trying to put across.

**Mrs Cutmore:** The voice of business.

**Mr Hope:** In my own community, the riding of Chatham-Kent, I talked to a number of small business communities outside their chamber jurisdictions about a program I implemented a while back with them called Workers Supporting Workers, because a small business community group is small businessmen or workers just like most people. They always prospered from the collective bargaining aspect in our area. Workers have consumer confidence when they have good-paying jobs because they're able to support the small business community in that effort.

1550

A lot of them supported a program implemented by the labour movement of supporting each other on plant closures because of the free trade issue; once they start understanding the devastation that took place after 1988 with free trade in our area, they come on stream with us. We're really questioning the chamber of commerce's approach towards the free trade agreement and its job projection. They said, "We're going to create all these jobs, jobs, jobs during free trade."

In talking to a number of the small business community, I've had one employer say: "Randy, I'm not even going to worry about the labour relations, because it's not an issue with me. I treat workers with respect. I talk to them on a daily basis. I have no fear of it. And if it's a wage increase, I would sooner give the wage increase to

them than a lawyer who's going to bleed me. It's not the workers who will bleed me, but the lawyer who will."

The chamber's role is to try to encourage investment in your community, because it helps your membership also at the same time. From your perspective, don't you think the portrayal of the labour relations reform is creating more devastation to our communities? There is a lot of other uncertainties out there causing a lot of devastation to our communities. Labour relations is not. If you treat workers with respect, isn't it true they will not organize?

**Mr Hogg:** That's correct.

**Mr Hope:** You're not telling me that all these employers in Ontario are bad employers, but you're projecting that all these jobs are going to be lost.

**Mr Hogg:** We just listened to Dofasco talk a few minutes ago.

**Mr Hope:** But Dofasco is not talking about moving its plant. Dofasco was talking about staying here because it's committed to the workers and it's going to treat them with respect. But the projections of the chamber of commerce and the campaigns out there are that people are just going to pick up and leave. You're talking about my well-being as a worker in that workplace. I'm not about to drive myself out of a job. I don't think people are like that.

**Mrs Cutmore:** Mr Hope, I guess I'm confused. Your question seems to relate to the good working relationships of employers and employees. I thought that's why we were talking about proposed changes to the act, because there is the realization that there are not good relations.

Quite frankly, it's our feeling that we haven't had a great deal of reason to think these changes are appropriate, probably for the same reason as you. We have a good quality of life in Oakville. We have an excellent economy because we have growth. When you have growth, you can get injections of revenue coming in, and that's what creates the good, all-round, happy pie.

**Mr Hope:** But how do you get good growth? Good growth is through the working people of this province, who spend money. If they don't have the ability to spend, your business community suffers. Is that not the truth? We hear about labour laws, we hear about taxation, we hear about everything, but if I have a consumer base out there coming into my store to purchase, laws won't matter as long as I'm treating my workers with respect. If the projections are there, the consumer confidence is there, and I'm going to expand my business. If we project consumer confidence, that will help us create a better business climate in order to create profit.

**Mrs Cutmore:** This is an area we in Oakville are working very hard on. In fact, you will see, although I did not provide the examples in the presentation made on February 7 that perhaps Sharon Murdock would be aware of, we had a positive campaign going forward where we felt it was important to increase consumer confidence and then start a sort of ripple effect into business.

Some of what you're saying is quite true, Mr Hope, but what we're trying to say to you is that we have to create an environment for business to want to come, because without business there will not be these employees to spend in

the community and create that environment you're talking about. I guess we're talking about a partnership. You have to have one and then the other, and certainly you want to work on that, and I think in a positive manner.

Actually, I had just given heck at a meeting on Monday morning that I had requested. The Premier invited me to participate, but I had not heard anything; then when I got back from the 7:30 breakfast meeting, I was told to phone and confirm my 3:30 appointment. There must have been a fly on the wall somewhere.

**Mr Offer:** It's good to see you again. I want to pick up on that last point about partnership, because if there's one thing that's becoming evident here, it is that Bill 40 and the perception about it, as well as its substance, have created a polarity, a division, between a great many people in this province.

You've spoken about the possibility of having the bill reviewed and things like that. Unfortunately, we're dealing with a time allocation by the government which is limiting these hearings to five weeks. We have limited debate, we have limited clause-by-clause, we have limited third reading debate. This bill is going to be law by October, and there's no question that that in itself is causing a great deal of concern to a variety of people who have come before this committee, not just the business community, but local boards of education, hydro services in municipalities. We've heard today from municipalities themselves, coming forward with concerns about the bill with respect to the issue that further study is required.

The government is going forward with this matter without knowing what the impact of this bill will be, and that is causing a real problem in terms of setting out that climate of investment in a positive way for creation of jobs.

You're the ones who carry on the businesses, you create the jobs in this province, and I'd like to get your thoughts with respect to the necessity for an impact study on this legislation.

**Mr Hogg:** We'd certainly like to see this thing postponed as much as possible and have the study done on its impact. There certainly seems to be no indication from the government that that's going to happen.

**Mrs Cutmore:** I said a very short time ago to John here how incredible I find it that both on February 7 when I made the presentation and today, how similar the presentations are, without the ability to work with other groups and ask what they have in their presentations. Quite frankly, as I said, I worked on this just from yesterday to today.

But the similarities, the absolute strong campaign against business—you didn't get that when you did pay equity; you're not getting it with employment equity; you didn't get it with the workers' compensation changes and you didn't get it with many of the other changes.

Interjection.

**Mrs Cutmore:** But not with the same strength you're getting it now. Almost all the presentations have almost the same points in them, and we have not sat down together. We've had some guidance from the top, yes, about the



main points and the statistics and things like that, because we do not have the time to do what perhaps other people do. They are ironically identical, the concerns we have about the loss of autonomy of business. It is business which provides the jobs, and I guess that is the fundamental point we are trying to raise.

While we are not able to know as much as you about the legislation and the points that are more technical, we get the returned envelopes from our members when they are no longer in business, and we are the recipients of the messages on the end of the phones that say, "I'm sorry, this number has been disconnected." We know there are people laid off. I think Menasco just laid off a significant number for the first time. When big firms like that start laying off, we know there is hurting going around, and the hurting is to the employee who is being let go.

We want as much for the employee as you do, because there is that harmony and satisfaction in the economy in a municipality, but we have to have that working relationship, and you cannot get it by confrontation. It has to come from working together. It's not going to be easy. It's going to be hard.

Look at you here; you're talking back and forth. There's that type of confrontation with unions, labour and business. There is a vested interest in the economy of this province, and as Premier Rae said—and we agree and said it in our presentation—we are committed to working towards that better relationship. We are not here to totally annihilate unions or anything like that. I think they have done well in the past. What we're saying is that we need to have the participation of business in these discussions and we need to have its concerns meshed with the different information you have, so that we have a well-rounded piece of legislation that will be following through on that commitment to quality for Ontarians.

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**Mrs Witmer:** Thank you very much for your presentation. Mr Carr has sent his regrets. He is unable to be here because of a previous commitment, but I know he is well aware of the concerns the Oakville chamber has because he has certainly shared them with me on numerous occasions.

I sensed a frustration as you were speaking, Ms Cutmore; in fact, almost an anger. I have to tell you, it's a feeling I share with you by the end of each day. Unfortunately, I have the feeling that throughout this entire process we're still dealing with a union-driven agenda. Although we are supposedly going through the process of consultation, I don't see any changes taking place that indicate that the government is listening to all the points of view that are being put forward. That concerns me greatly.

I guess an example of that was shortly after the minister returned from his consultation in January and February. I asked him about the secret ballot vote and he said, "Well, nobody raised that as an issue with me." I was able to quote to him many presentations which did ask for a secret ballot vote. It appears that the government conveniently chooses to ignore the points of concern that many people in this province are putting forward.

So I understand your frustration. I'm concerned that we won't see any substantive changes to Bill 40. But I would ask you, if we are to ensure that there are jobs created for our young people and if we're going to have investment in this province, what must this government do with regard to Bill 40 at the present time?

**Mrs Cutmore:** I think the best thing is to put a freeze on what we're doing right now and get these parties together and talk. I don't know any type of relationship that is not bettered by discussion.

We talk about a marriage here. If you noticed, I've mentioned the Premier's letter, when we asked him to be present at one of our seminars. You don't legislate marriages; you don't mandate functions in marriages. How long would you last in a marriage if you did that? You have to have discussions and you almost have to have negotiation; you have to have all parties representing their views. I think it's really crucial.

I'm just going to take a liberty with your first comment, and I hope my president here doesn't mind. I am a former politician and I am frustrated; I understand what you're going through. I understand there's this side and that side and "We believe" and "You don't believe," but I also understand that until something is passed and if an open mind is kept, if there are some good changes mentioned and if there are some good things people are telling you, there is room for change.

I believe in the democratic process and I believe everyone should be heard. I'm not just on a soapbox; I believe it so much. I guess that's my greatest frustration, because we hadn't heard: I had sent in a letter immediately, and we had not even had a response to say, "Yes, you could" or "No, you couldn't." Then for someone to say he hopes we would participate—again the Premier—how can we, when we don't get an opportunity like this, and only 240 out of 1200? Is this really hearing what has to be said out there?

My frustration is that I think it's important to keep an open mind. Yes, there are some philosophies of governments, but there are more important things: the people who live in this province and the businesses that employ them. I think that has to be very much a priority.

**The Chair:** The committee says thank you, the Oakville Chamber of Commerce, for your interest in this matter and your readiness and willingness to participate. You've made a valuable contribution. Have a safe trip back home.

#### LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183

**The Chair:** The next participant is the Labourers' International Union of North America, Local 183. Would you please come forward, have a seat, tell us your names and titles, if any, and proceed with your comments. Please try to save the last half of the half-hour for questions and exchanges. Your written material will be distributed and filed as an exhibit and will form part of the record. Go ahead.

**Mr Daniel McCarthy:** Hello. My name is Daniel McCarthy; I'm counsel with Local 183. With me are Walter

Ruszczak, who is in charge of our industrial wing, and Tony Dionisio, who is the president of our local.

Local 183 of the Labourers' International Union of North America is the largest construction local in North America, with over 14,000 members. In addition to representing construction workers, Local 183 has an industrial wing which represents factory workers, employees of property management firms and cleaners. For example, we represent all cleaners at all three terminals at Lester B. Pearson airport.

Our membership appreciates this opportunity to express its support for Bill 40. Although our support is not unqualified, Local 183 supports the government in its efforts to fashion a cooperative, consultative labour relations atmosphere and to make unions more accessible to a greater number of Ontario workers.

We are also pleased to have this opportunity to address the standing committee, as the introduction of Bill 40 has been surrounded by unnecessary hysteria. Accusations ranging from "This is the wrong time," to arguments that it will decrease Ontario's competitive position in the global economy or that it will be a disincentive for investments are specious arguments.

As I am sure the committee has heard from many presenters, Bill 40 is not innovative; it merely replicates existing laws from other Canadian jurisdictions. Those jurisdictions continue to have economies and continue to attract investment. In fact, union employers in construction bid competitively on projects while paying decent wages and benefits, because both they and the union continue to invest in our membership, becoming increasingly productive. The union makes the workforce more competitive, and the employers recognize this. They sit on the joint board of trustees of our training centre. Anyone familiar with the history of Local 183 knows that the image of a labourer as someone with a pick and shovel is no longer reality.

There are two underlying principles with which the committee should evaluate Bill 40 and submissions made on it. First, our entire socio-political-economic system is based upon small-l liberal theories of competition, rights, and the balancing of those rights. In Canada we believe in a level playing field, in equality of access and opportunity. We urge the committee to remember that unions, through collective bargaining and political activity, are the primary method for working people to have a more level playing field. Therefore, any legislation which enhances the participation of workers in this recognized and necessary mechanism is important.

Second, it is not enough to give a worker a right without providing the wherewithal to exercise that right. Any of the proposed changes to extend the right to association must be tangible. Certainly the case of domestics jumps to mind. Most domestics are employed in separate workplaces by separate employers, and the hurdle requiring that there be more than one employee at a workplace before employees can organize effectively denies the right being extended. We would urge the committee to keep this paradigm in mind as it examines all aspects of the bill and the submissions made.

We support the extension of the access to collective bargaining for groups now excluded. In particular, we would like to address the agricultural, horticultural and silvicultural workers. We understand that workers in these groups may be addressed more directly by the agriculture ministry.

For this reason, we hope that the committee and Bill 40 will make a clear distinction in the landscaping sector. In the landscaping sector, we are not talking about what may broadly be described as agricultural workers, whether they be in a factorylike setting or not. Landscaping is often part of construction contracts, whether they be in the residential or the industrial, commercial and institutional sector. Workers in landscaping have a range of skills, from demolition of existing site conditions, timber work, landscape masonry and stone cladding works, paving and structural woodwork to sodding, seeding and planting of nursery stocks.

Currently, we have approximately 40 companies under collective agreements with the rights inherent under the Ontario Labour Relations Board. Also, we have subcontracting clauses in the ICI agreements stating that the landscape work must be done union. Clearly, the employees recognize this sector.

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As some of this work may potentially be horticultural or agricultural, there is a danger that this would be swept into future changes regarding agriculture and that the rights presently enjoyed by workers in landscaping would be lost. In addition, in a sector such as landscaping where there is a confluence of skills, formal recognition of landscaping as a sector would prevent costly and inefficient jurisdictional disputes. We submit that this recognition of landscaping as one of the construction sectors would remedy this.

Local 183 supports the various measures which make access to union representation and collective bargaining more accessible. We support the elimination of the \$1 membership fee. It does not represent any financial commitment and has become an item for delay in attempts to frustrate the certification process.

We are disappointed that the support required for certification remains at 55% and not a simple majority. We support the lowering of the percentage needed for a representation vote from 45% to 40%.

We have reservations with regard to the proposed amendment regarding petitions. The main effect of this proposal is to prevent the board from considering post-application petitions from employees who claim they do not wish to be represented by a union. It would appear that pre-application petitions would be accepted.

This is certainly going to raise numerous problems, most of which will simply duplicate the problems the elimination of post-application petitions was to remedy. The OLRB will be forced to keep petitions on file where no application for certification is being made. Issues will arise such as when a petition becomes stale, or the element of coercion in signing a petition to obtain a job. As the overwhelming majority of petitions are rejected by the board, we submit that all petitions be eliminated. At the



very least, sensible restrictions on pre-certification petitions should be a part of the bill. I say that as a lawyer. It would not take me too long to advise all my clients how to avoid a certification drive by simply having ongoing lists being sent to the labour relations board on a regular basis. Then we have to fight them all over again, instead of after a certification drive, when it happens.

Local 183 endorses the just cause protection of employees from unfair labour practices during an organization campaign. There must be expedited hearings for persons dismissed during organizing campaigns. As we suggested in our underlying principles, the right given must be material. The right to organize would be hollow, if a worker faces the spectre of a long period of unemployment and loss of livelihood while pursuing reinstatement for exercising his or her right to association.

The proposed amendment to the act, expanding the jurisdiction of the Ontario Labour Relations Board to hear jurisdictional disputes where the parties in dispute have entered into a collective agreement requiring the reference of any different work assignments to initially select a tribunal, has our support. At present, the resolution of jurisdictional disputes is unnecessarily lengthy and expensive. It would appear that the process of consultation, representation and interim orders is a preferable solution.

The amendments in the contract services sector will assist in rectifying the widespread problems experienced in that sector under the current legislation. It would appear, however, that there are several shortcomings. The distinction being made between a subsequent contractor and a purchaser means that only some of the obligations are imported. In addition, the ultimate remedy under part XIV of the Employment Standards Act may prove unenforceable, particularly as restructuring of companies in the cleaning sector would exempt them from the provisions altogether.

The related-employer issue is a major shortcoming of the bill and, I might add, a disappointment. One method of addressing this shortcoming is to make the discretionary determination under the present legislation mandatory. As you can appreciate, in the construction industry, which is project-oriented, where sites change rapidly and companies can restructure easily, especially when compared to the industrial sector, the determination of related employer must occur expeditiously. At the very least, we submit that the related-employer issue, in addition to being mandatory, should be a matter heard before a sole vice-chair.

In conclusion, Bill 40 represents a progressive change to the Labour Relations Act. The purpose clause makes it clear that in interpreting the act the board will be in a much better position to balance the interests of workers and employers through the agency of the trade union movement. We trust that these changes will extend the right of association to a greater number of workers who will enjoy equality in access and opportunity to which too often we pay lip service.

**The Chair:** Thank you, sir. Mr Offer, four minutes, please.

**Mr Offer:** Thank you for your presentation. I'd like to look into two areas. The first was an area we haven't really

dealt with in any real depth so far, and that is the agricultural sector. You have brought forward some concerns about that.

I think you will be aware that currently the agricultural and horticultural operations in Bill 40 can be prescribed by regulation. In other words, the minister, outside of the legislative process and outside of committees such as this, can decide, if he wishes, who is to be covered, how they are to be covered, when they are to be covered and where they are to be covered, without affording any consultation through the legislative process. Specifically bearing in mind the concerns which you have brought forward, I'm wondering if you would be supportive of an amendment to the legislation that would say that any change to coverage in these areas cannot be done by regulation but must be done by legislation and therefore be subject to the Legislature, debate, public hearings and the like.

**Mr McCarthy:** Let me answer that by making two points. In the construction industry, we're accustomed to being dealt with by regulation, whether it's Bill 162 or the new employment equity legislation. Our usual concern with regulations is that the act does not preclude the regulations from becoming effective. As you are aware, the reinstatement provisions of Bill 162 preclude about 65% to 70% of our members due to the drafting of the legislation. It appears this will not be the case in employment equity. So that's my first point. We're accustomed to being dealt with specifically in regulations as an industry because we are so different.

Secondly, with regard to consultation, certainly we're never against being asked if things will work, and certainly one would hope that in the drafting of regulations there would be some kind of consultation with the players, both employers and unions, in the construction field. That being the case, we'd be comfortable.

The real reason we raise the agricultural is that in an area such as landscaping, where you've got really everything from A to Z that goes on, we're quite concerned that if clear lines are not drawn, if we don't approach it consistently, in dealing with agriculture we may be taking away rights that have been granted to organized workers. That's our principal concern, the consistency.

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**Mr Offer:** On page 5 you speak about the problem you are predicting in the area of petitions, and I think you're talking about pre-app petitions. I would suggest that one of the ways your concerns might be alleviated is if there is an amendment to the bill which would provide mandatory notice of an organizing campaign to the employees, to give to the employees notice of their rights; as such, those pre-app petitions could be, of course, centred on one particular organizing campaign. I would like to get your thoughts on whether you feel that all employees in a workplace should be given notice of their rights in a way which is free from coercion and intimidation.

**Mr McCarthy:** I will defer to people here who have experience in organizing drives.

**Mr Walter Ruszczak:** I'm not familiar with the pre-application petitions, but the ones after an application is

put in definitely cause problems. As to people being aware of an organizing drive, in all those I've been involved in, every employee is aware of the fact that there is a drive going on. There are no hidden agendas, that we approach certain people and we don't approach other people. All people are approached when we're in an organizing drive.

**Mr Turnbull:** We had a presentation earlier this afternoon, from one of the groups I suppose you would depict as being hysterical, although I haven't detected any of these groups as being hysterical; quite the contrary. It's Project Economic Growth. They seem to put forward some interesting solutions to the problem that exists: that on the one hand, unions are saying they must have these changes to the Labour Relations Act, and on the other side, businesses are saying they can't live with these changes.

Let me just read briefly some of the details. Union organizers would only be required to obtain signed membership cards from a percentage which would be lower than 40% to trigger the certification process. Employees would not be required to pay a \$1 fee when signing the card. Union organizers would notify the OLRB and the employer of their intent to organize a given workplace and provide evidence that they signed this percentage, whatever it happens to be, say 25%. The OLRB would then determine if the appropriate bargaining unit had the requisite percentage, and the OLRB would then obtain the names and addresses of the employees from the employer.

Both the union and the business would then be required to put forward, in writing, what they considered to be the salient details of the impact of this. On the one hand, the union would put forward why they think the people should be organized, and they would put forward very concisely all the costs of membership in terms of the annual dues they pay, how the money is disbursed and what the union does with those funds. On the other hand, the employer would be allowed to state what the implications of this would be, but without any suggestion that it was trying to coerce the employee. Then, based upon that, the OLRB would organize a supervised secret ballot within a reasonable period, and certification would be granted upon a straight 50% plus one in favour. Could you respond with your comments on that proposal?

**Mr McCarthy:** Let me begin with a note of incredulity. What they seem to be suggesting is that a union doesn't hold an organizing drive, but that a union sits down with the company and has a discussion about an organizing drive.

**Mr Turnbull:** That's not what they said.

**Mr McCarthy:** And then we campaign to try to get 51%, when in fact, given the master-servant relationship which is always underlying any employment relationship, we're not looking at a level playing field there.

**Mr Turnbull:** Let me suggest that perhaps the implications—with the first-contract provisions of this bill, that after 30 days they can force a first contract, and there is no direction for the arbitrator to take into account the financial status of that company—seem irresponsible to the potential members of your union, who as a result of driving the

company under could lose their jobs, and that has happened. With the greatest respect, that has happened.

**Mr McCarthy:** I resent the insinuation that we would try to bargain a company under. I'm sure it has occurred, and I'm sure it's the exception to the rule.

**Mr Turnbull:** It certainly has, and it's well documented.

**Mr Hope:** Prove it.

**Mr Turnbull:** Algoma, my friend. That wasn't the first contract, but they drove the company under.

Interjection.

**Mr Turnbull:** Yes. It's great that the taxpayers have to buy it back from them after they've bankrupted the company.

**Mr McCarthy:** We've just gone through agreements with 11 associations in the midst of what could easily be the worst recession this province has ever seen. We've signed agreements with all three. We are extremely aware that the answer for the industry is on both partners surviving.

**Mr Turnbull:** You're to be complimented on that. I have no problem with that.

**Mr McCarthy:** It would seem to me that underlying this whole drive on first contract and this whole idea that the employer should be involved in a union's organizing drive is that unions may be irresponsible. But quite frankly, we have the interests of our members at heart.

**Mr Turnbull:** But I've heard many times from union presentations here suggestions that employers are often irresponsible. I would suggest there are probably equally as many cases of unions and employers who are irresponsible, but the vast majority of unions and the vast majority of employers are responsible.

**Mr McCarthy:** It would seem to me that the answer, then, is that your suggestion is not going to cure those who are incurably irresponsible.

**Mr Turnbull:** No, I agree. But I'm saying there should be a requirement that employees be fully aware through the OLRB—an independent group without a mandate to advocate on either side—what the implications of this would be and what the financial status of the company was. Does that sound like a reasonable proposal?

**Mr McCarthy:** It sounds to me like you've put a group in the centre, being the workers, and you have unions and employers arguing, on whatever ideological or practical basis and the spectrum in between, about who can offer the best service. I think it's best to let the organizing drive be a union organizing drive.

**Ms Murdock:** I guess sometimes people tend to forget and occasionally have to be reminded that it's workers who form a union and that the union represents those employees with their employer.

On page 3 in your section on extending the right to organize, I have a question in regard to including landscaping as one of the construction sectors, because what I read and what I'm understanding you to say is that all landscapers would automatically be in the construction



sector. Do I understand correctly, first of all? Then I'll lead into my next question depending on your answer.

**Mr Tony Dionisio:** At the present moment, as we were saying, we have over 40 contractors who are bound to a collective agreement via subcontracting clauses that were negotiated both in the ICI sector and in the civil engineering sector.

One of the main reasons it's worked out well, number one, is from an economic point of view. As we made reference to in our brief regarding training, over the last 15 years, Local 183, jointly with management, has gone through a great expense in teaching these landscaping workers how to do in particular timber work, stone setting and the combination of many things that are done by landscaping contractors.

We've reached the point where unless we come up with a clear identity, as time goes by it would definitely create a problem and we will engage in many jurisdiction disputes.

To answer your question, in this line of work, it would make them landscaping contractors. It clearly identifies what a landscaping contractor is; in other words, hard landscaping. We're not talking about agriculture or horticulture or silviculture; we're talking about the everyday hard landscaping on a construction site. I think this is what we're looking for, its own identity. It's there but it's not being recognized and it's long overdue.

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**Ms Murdock:** I'm just going to go back to the pre-application petitions for a moment. This is strictly off the top here. It suddenly struck me as you were making the presentation and then when Mr Offer was asking you questions. As soon as you said that, as a lawyer, you would tell your clients exactly what to do in terms of how to extend it or delay it or make it almost as bad as the post-application petitions presently under the act, I thought, what would your comment be if the right to change one's mind, which we've heard time and again throughout these presentations, had to be on an individual basis, say in written form by the member, if he changed his mind, to send it to the board?

**Mr McCarthy:** The difficulty, we said, is that what the board is trying to identify in the jurisprudence, among other things, is whether or not there's an element of coercion, whether or not people are being persuaded, or even where there is no coercion, they sensed some. It gets extremely subjective. Whether you have a petition listing names or individual envelopes, once you get into that game of trying to second-guess a person's mind at a particular moment—not to mention that you're going to get the person who agrees with the last person he spoke to—it's just a real conundrum. I think where we should be focusing is that the vast majority of petitions are tossed out. There is a decertification process that's already in the act that isn't being touched and is exercised on occasion.

**The Chair:** I want to say thank you to the Labourers International Union of North America, Local 183. You've made a valuable contribution to this process and we're grateful for your participation. Thank you, people. Take care.

DANIEL DRACHE

**The Chair:** The next participant is Professor Daniel Drache from York University. Sir, please go ahead.

**Mr Daniel Drache:** Thank you for inviting me here today. My area of expertise is comparative industrial relations systems and the relationship between industrial relations and industrial policy.

My remarks today address the relationship between the system of industrial relations, the proposed reforms and Ontario's competitive position. I think this should even be of interest to the committee.

Analytically, the relevant question to focus on is whether Ontario's employers, either generally or in specific sectors, are being handicapped by the reforms contained in the proposed legislation. Will the reform package, I suppose, price Ontario manufacturing out of the market? This is the question that a lot of people focus on here. I want to shed some light on it.

The way I would answer the question is to begin with an assessment of the existing system. How well is it? How effective is it?

First, let me give you a few facts or remind you of a few facts. Private sector unionization in Canada has fallen persistently throughout the 1980s. Non-union employment has grown to about 1.6 million, while unionized employment is just over 200,000 in Canada. What's the situation in Ontario? Private sector unionization levels in Ontario have fallen to below the 20% figure from the 27% figure.

If we look at Ontario and compare it with surrounding American states, the figure of 20% is lower than the figure in New York and in Michigan. If we look at the wage situation, Ontario remains—this might surprise some of you—a relatively low-wage area in North America. Many sectors are between 10% and 20% lower than their competing American regions.

What I would draw from this is that the existing system is seriously weakened. If we take into consideration and look over the last decade at the number of new applications that are made to the Ontario Labour Relations Board, the number of applications is not very great and the number of new entrants into the system is very low, roughly somewhere between its variable in the period, in the area of 2,000 new entrants into the system.

What I would conclude from this is that the system is in danger of not reproducing itself and it's in serious trouble. From my own perspective as a person who studies a lot about industrial relations and its effect on competitiveness, I would say that, if anything, the system in Ontario is investment-neutral if not investment-positive. After all, unionization levels are falling; therefore you cannot say that the industrial relations system is a disincentive to investment. I don't think that makes much sense, based on the record.

The decline of Ontario's industrial relations system can be traced to a number of factors. First, it is a factory-by-factory system and is as close to a market model of industrial relations as possible. The consequence of this is that it fragments labour. Every group of workers negotiates at the factory gate with its employer. This is a very simple, competitive model of industrial relations. It prevents workers

or employers from negotiating across sectors or nationally, regionally or provincially, with some exceptions in the auto industry and in the construction industry, but these are special cases.

Second, it's an opt-in system; that is, it is not an all-in system where all employers are required to negotiate collective bargaining agreements. It's a very backward or simple system compared to the systems in Europe. This is particularly problematic because the system was designed for large-scale plants in the smokestack industries and ill serves the service industry or the service sector, which are basically small enterprises.

Third, the decline or the difficulty in the industrial relations system, and the problems that Ontario-based employers are having, do not in large measure relate to the industrial relations system. This is scapegoating of the worst sort.

To give you a frank assessment, the real problems really stem from the free trade agreement, which has precipitated a wave of shutdowns. If you trade more, you have more problems of adjustment. There are very few programs in place; therefore, there are a lot of problems. Ontario business has been deeply hurt, really, by high interest rates. It's impossible to believe that a system of industrial relations, which is not very strong, that the declining levels of unionization can drive Ontario business over the brink. I think this just defies common sense and proper logic.

The decline in Ontario's industries and in its competitiveness is much broader. I think part of the problem is the business culture. I think it is handicapped by the fact that it is a fragmented business community which does not address common problems, and this is encouraged by the industrial relations system in a number of respects. For instance, training remains a voluntary decision at the firm level. There is little incentive for all firms to invest in training, therefore this discourages skilled training and investment in the workforce.

Therefore, the consequence of this kind of voluntaristic, individualistic system of industrial relations is that it encourages business not to treat workers, its employees, as assets. Basically, business looks to government to pay for training rather than in large measure to invest in its workforce. This too has handicapped business in the present crisis.

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Secondly, the voluntary system has other problems for the business community. Canadian business largely does not invest in research and development. It is at very low levels compared to European countries or Japan and as a result Ontario business and Canadian business, in the global sense of the term, is not a very innovative community. It looks to short-term solutions, driving down wages, squeezing labour at the bargaining table, relying on a large, non-unionized sector to pull down wage rates and to lower working conditions.

I think we should contrast this for a moment with the case in Germany, Sweden, Japan, Belgium and Holland. These countries are basically high-wage and high-skill economies and this is the paradox. Why is it that they are competitive and successful internationally, with a high-

wage, high-skill economy? Why is it that with higher taxes and a much more generous social wage, they have a better record at restructuring, competing and innovating than Ontario-based? Is it because they're organized in a collective way, business and labour, highly centralized, while in Ontario we're at the extreme end of the spectrum, a highly decentralized, voluntaristic system?

Present-day scholars no longer buy the argument that I've heard here today that a low-wage, deregulated labour market produces innovative firms and a high-wage, high-skill economy. If the committee is interested in saying, "What is the relationship between competitiveness and the industrial relations system?" the argument would be that countries that take seriously the competitive argument have to shape the market.

In the case of Japan, Germany, Belgium and Holland, and Sweden which has an economy very similar to our own, industrial relations is a key element in shaping the market. Why is this? Because they create a much tougher standard on business. Business is required by law in Germany, Japan, Sweden and Holland to invest in skills. They are required to deal with a unionized workforce. They have an all-in system, not an opt-in system. It's a strange form of industrial citizenship.

I would argue, therefore, that the bill before the committee is at best a modest step. Probably it is too modest if you take a kind of comparative international approach. For instance, let me say three areas where the bill is deficient.

It does not, for instance, address adequately the feminization of work—the existing system of industrial relations was designed for the male worker—which is then frequently in small enterprises in the service sector, which is largely unorganized and faces massive difficulties. In my judgement, it's very unlikely that the opt-in system will extend to women a modern concept of industrial citizenship; that is, the right to bargain collectively for work conditions and salary. Therefore, that is a problem, a limitation, and I don't think the bill particularly makes a large step forward by tackling this big question.

Secondly, I don't think the bill demands enough of business. It does not require firms to go beyond the existing system of industrial relations, for instance. I don't think it does enough to discourage redneck employers. I think the positive side of the bill really is the anti-scab, which is a small step. It is not actually at the present time all that significant, with very high levels of unemployment. If you look at the incidence of strikes in Ontario, they have fallen dramatically, with some exceptions, but I think it's an important part of a modern concept of industrial citizenship that workers be protected in this way none the less.

Thirdly, I think that if one of the intents of the bill is to create a new labour-management-government environment, the reforms do not go far enough in this respect. To achieve this end, the government really has to look very seriously at creating other forms to broaden the areas where business, labour and management can cooperate and address the serious economic and social problems that the province faces.



I think in this respect the question of an industrial strategy is an important component of reform to the existing labour code. Having said this, the current legislation then could be strengthened, I suppose. But I don't think this is on the agenda. The government is certainly under considerable pressure even for its modest efforts. But I think it would be proper that the committee take note that more is needed if Ontario is to rebuild its shattered industries.

**The Chair:** Thank you. Mr Turnbull, five minutes, please.

**Mr Turnbull:** Frankly, we're not going to give a further platform to such obvious socialist rhetoric, so we pass.

**The Chair:** Okay. Mr Huget.

**Mr Huget:** Thank you for your presentation. It's certainly becoming clearer to me that the opposition to these what I consider to be modest reforms, in my opinion, is as much opposition to change itself in terms of the industrial status quo in the country as it is to labour relations.

I have a hunch that industry in this country has evolved as being a resource-based industry and is now faced with some shifts, in terms of the industrial capacity of this country, to a more service-oriented economy. I get the sense that there's opposition to that. I also get the sense that those who want to preserve the status quo are preserving a bit of an illusion in terms of our competitive capacities and what we're able to achieve in this country under the current system. There's certainly nothing to say that we're number one; I mean, we can certainly make some improvements.

You allude to the fact it doesn't go far enough in terms of setting a new direction. I believe that government has a role in setting direction, in putting in place policies that encourage innovation rather than just enabling us to stay the same. I think in a lot of cases, and being totally non-partisan, what's happened in the past in this country is that we have indeed dealt with issues and allowed them to stay the same at the end of the day.

I think there has to be a change in direction here. You mention in your presentation that there are things we should be considering and steps we can take a little bit farther in terms of trying to make the kind of change that I think you're alluding to. I wonder if you could expand on that.

**Mr Drache:** The design of the original industrial relations system in Ontario grew out of the postwar compromise. It was a system essentially designed for the smokestack industries—large-scale production. It was, after all, an important step forward, and what it offered Ontario were two things.

First, it offered an environment to promote labour stability through collective bargaining. The collective bargaining system was very important, as it turned out, because it provided a way to have a flow-on effect in terms of wages so that wages rose with productivity. It was of tremendous value to Ontario enterprises and to the business class in Ontario to have increased productivity and a transformation of consumption norms, and so this link was seen as an essentially positive one.

In the 1980s, of course, about 25 or 30 years after this system, the system experienced enormous shocks, both internal and external. The external shock was, of course, increased economic integration from the south and a belief that we should open our borders to a basically American trade regardless of the costs and consequences. This in itself is possible if the government or any government puts in place programs that can manage the adjustment process, but this is not the case in Ontario.

Second, Ontario manufacturers are tremendously disadvantaged on the interest rate side. If you look at a modern business approach to what creates a strong economy, if you have record high interest rates, small firms are going to go under. It's not wages. It's very hard to demonstrate the link between wages and business failure in this province. It seems to me that the relationship is backwards.

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The third element which is new, of course, is the massive entry of women into the workforce and the fact that enterprises have gotten smaller. So how is this system of industrial relations, which was born in another era, going to relate to the new conditions that face Ontario?

It seems that if you look at some of what other countries do, if you don't look towards Alabama and Texas as your model, you can see that industrial relations systems not only provide a way for people to transform consumption norms, guaranteeing people an upward pressure on wages, which is inherently positive, but they also should provide a forum for employees, for unions and their employers to address a range of problems. The difficulty with the Ontario system is, it's too narrowly focused on bargaining about wages and not enough about other things.

It's quite significant, in listening to some of the presentations even briefly here today, that the idea of an opt-in system—I mean, we don't ask employers to opt into unemployment insurance. We don't ask on a variety of things to have opt-in, and it seems to me this is a kind of bureaucratic system which engenders fights, engenders a whole culture of legalism, and it defeats the purpose of what modern industrial citizenship should be.

So my argument would be that a system that encourages industry-wide norms strengthens both the economic performance, because it means you have an economy which does not subsidize weak firms, and on the other hand you find other means to encourage small, innovative firms to stay in business, but they have to pay the going wage and they should not be subsidized on a low-wage basis.

This bill is a modest step forward, in my opinion, but it will not have the desired effect—to create a new environment in the province at this time—because in many respects it doesn't go to the root of the problem, which is the design of the system, this opt-in, factory-by-factory system.

**The Chair:** Mr Hope, did you have a brief comment?

**Mr Hope:** Brief comment. Now I've got to change the strategy.

On Project Economic Growth, today they said to permit replacement workers to go in for up to 60 days and, after 60 days, no longer have any replacement workers. I'm just

impressed with what you said. Unfortunately, Mr Turnbull doesn't stick around to ask the questions because you're not the right viewpoint, which is probably one of the problems we have with management-labour relations. But what would you see as allowing workers to be replaced for 60 days while they're on strike collecting maybe \$50, \$100 a week in strike pay and supporting a family?

**Mr Drache:** Where you have a strike which is a conflict between management and labour, the aim always in a strike is to test both sides, their respective positions. But it seems to me that the aim of an industrial relations system is to resolve conflict. Therefore, by allowing a firm to import replacement workers, it tends to prolong and aggravate disputes. So I take the position that this should not be permitted. It does not facilitate the resolution of disputes.

If you look at practices in other countries, the idea of strikebreakers is not part of the industrial relations package in most European countries. If there's a strike, there's a strike; there's a shutdown. Labour suffers in terms of loss of income, business suffers, and the idea is that both parties, because they have an interdependent relationship, eventually have to come back to the table.

So the aim of an industrial relations system should be to permit both strikes and lockouts, but on the other hand you want to have a number of institutional means to contain them so that the strikes are short and the parties resume negotiations. I cannot see how strikebreaking helps create a better relationship between business and labour and employees in this province, so I would say that business should not be permitted.

**The Chair:** Mr Offer.

**Mr Offer:** No, that's okay. Mr Phillips has a question.

**Mr Phillips:** I appreciate the presentation. I've got a couple of questions. I may not get to both of them. One is on your model of the workplace. A lot of the future workplaces I read about are kind of seamless workplaces where you walk in and you could never tell who the "employees" are and the "owners" are, where it's irrelevant that you have workers, and therefore a model where you have an artificial division between two groups of people is seen as something that's not consistent with the way a future system's going to work. Therefore a situation where you have a union is in those organizations irrelevant because there's no "need" for them. But the model you've talked about is one model. Why would you not at least open your mind up to the possibility that there are several different organizations that might function in a successful company?

**Mr Drache:** Recently, I visited the CAMI plant in the province, as well as the Honda plant. These are two of the most modern firms in Ontario, with roughly, I suppose, close to \$2 billion in investment. One is organized and one is not. So in that I agree with you that you can have different models of the workplace.

**Mr Phillips:** Equally effective?

**Mr Drache:** Well, two things are happening, if I can broaden it. First of all, the CAMI model I visited in the Ingersoll plant is remarkable, because it is the kind of conventional wisdom that management will change its attitude to the workforce without unions. Just for the record, I

think the research in the United States is that American companies tend to invest a lot, billions, in equipment in sophisticated sectors, but the current findings at least are that they do not invest in the workforce.

I'm saying that the role of the union is in empowering, because where you have a partnership, what the union is, among other things, is a counterweight to business's enormous power. Certainly in Ontario, unless Ontario-based business adopts the Honda model of lifetime employment and makes very significant changes in its own practices, it's very hard to see how much Ontario business would be in a position to adopt what we call the lean production Japanese model.

**Mr Phillips:** Is IBM wrong then?

**Mr Drache:** Remember the history of IBM. IBM adopted what I would call a kind of corporatist approach to its labour force. It was a capital-intensive industry, and it decided to adopt basically many of the union practices, including a grievance system, not as good I think as in a unionized factory, but they modelled themselves as a union shop without the union, and paying above-average wages.

The reason for this was the nature of their product. I visited the Don Mills plant, for instance, and you can see when you go there, because of what they're producing—you know, banknote machines that sell for \$850,000 or \$1.5 million—that they need a high-skilled workforce that doesn't need to be supervised. So it's part of the product that created the IBM model.

On the other hand, it said it would never lay off workers. It's now downsizing its workforce by 30,000. So there are problems there.

The argument for unionization is that it's the most effective instrument we have as a way for management and employees to bargain and to forge a relationship. It is a modern relationship, after all. It is a way to correct the imbalance business yields, and it's an educational instrument as well; in other words, on the question of technology, on the question of workplace practices, on the question of health and safety. It is very difficult to see how the workplace can be organized without a union presence, because the unions represent for the workforce a modern concept of industrial citizenship. If you took that away, we're saying "What do we get?" if we imagine a world without unions. My answer to you would be that the industrial relations system is the absolute key to your industrial performance.

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**Mr Phillips:** That's all I need to know. Thank you.

Interjection.

**Mr Phillips:** I just think you have the blinders on, that's all. I hope in the academic community you would look at other models, that's all. You undermine your credibility with me when you say that's the only model. That's all I'm saying.

I accept that in a unionized environment you can have a terrific environment, but to think that's the only one—I'm repeating myself—you've undermined your credibility with me. That's fine, because I understand where you're coming from. But I think as an academic you would have acknowledged that there are other models that are working



exceptionally well in Canada and around the world. Because you've said that's the only model, then I have some difficulty with your presentation.

**Mr Drache:** Well, I just want to be clear. If we look at the Japanese case and the German case, and you say these are the countries which have the best productivity performance in metal engineering, which is the automotive core of the German economy, this is all, 100%, unionized. If you say Japan and you look at Toyota, Toyota has its own model of unionization. If you look at Honda, it has its own model of unionization.

While I certainly acknowledge you can have a range of industrial relationships, I think it is instructive that the countries which have done best over the last period are the countries which have very high levels of unionization.

**Mr Phillips:** But I look at the companies.

**Mr Drache:** Well, we can look at the companies.

**Mr Phillips:** Why don't you?

**Mr Drache:** Well, Honda, for instance. We look at a range of companies. But I think to believe that individualizing, by having a kind of voluntary industrial relations system in which priority is put on workers bargaining individually with their individual employer, is somehow going to be a step forward, a way forward for Ontario business to get itself back on track, I'd say we might have an honest difference here.

**Mr Phillips:** We do.

**Mr Drache:** I think this is very unlikely.

**Mr Phillips:** I think the government members would agree with you, and I don't. That's all.

**Mr Drache:** Well, I'm here as a witness.

**Mr Phillips:** I appreciate that.

**Mr Drache:** My area of expertise is in this area. It seems to me this is an important committee. There's been very little reform of the industrial relations bill in the province. There have been some smaller changes over the past 30 years, but this is an occasion to look at it with lucidity and to try to look at it in a comparative context.

It would seem to me that lower levels of unionization and the weakening of trade unions has not helped Ontario business get itself on track and it has not led to more investment in research and development. It has not led to a better health and safety record. It has not led to the diminishing of wage inequality between men and women. It seems to me the record speaks for itself on this point.

**Mr Phillips:** When you talk about a worse health and safety record, that is simply not factual.

**Mr Hope:** Look at the workers' compensation claims, Gerry. Come on.

**Mr Phillips:** It's not factual. You will see the claims dropping. So your credibility with me is—

**Mr Wood:** September 6, 1990, Gerry, that's what you're upset about.

**Mr Drache:** I don't think this should only be a partisan matter to score a few points. There's hardly anyone here; there's no one from the press. It seems to me there is a reality in this province, that Ontario is facing a deindustrialization of its industrial core, and the question is how to rebuild the core of Ontario's industry and, secondly, to look at the kind of relations between labour and business.

If it is to be an environment that is based upon a race to the bottom, bidding down the price of labour, I put it to you that business will have no incentive to invest and it will continue to operate at the margins. I find that industrial relations systems do make a difference, and if you want different outcomes, you need institutions which are going to create different kinds of outcomes. So for me, it's not an ideological question; it's a question both of getting the facts straight and, secondly, in a larger global perspective, you have to say, "Do you want to go in the direction of the countries which have a high-skill, high-wage economy, or do you want to go in the direction of a low-skill, low-wage economy?" I think this is a fundamental decision for this province.

**The Chair:** I want to thank you, Professor Drache, and indicate that it was because Mr Turnbull waived his time that Mr Phillips had an opportunity to ask more questions than he would have normally. On behalf of the committee, I want to thank you very much for your participation in this process. We appreciate your interest and your eagerness to assist. Thank you, sir. Take care.

**Mr Drache:** Thank you.

**The Chair:** Mr Offer has a motion on the floor. He moved yesterday that this committee request the House leaders to amend the motion moved by Mr Cooke on July 14, detailing the dates and times of sittings for the purpose of clause-by-clause consideration of Bill 40. Is there any further discussion of that motion?

**Ms Murdock:** Yes, Mr Chair. We support Mr Offer's motion.

**The Chair:** Thank you. Is there any further discussion? All those in favour, please indicate. Raise your hands. Opposed?

Motion agreed to.

**The Chair:** Is there any other business? We're recessed until 6:30.

The committee recessed at 1707.

## EVENING SITTING

The committee resumed at 1830.

## LABATT'S ONTARIO BREWERIES

**The Chair:** The first participant is Labatt's Ontario Breweries. Please have a seat, tell us your name, your title, if you wish to, and proceed with your comments. Please try to save the second half of the half-hour for questions and exchanges.

**Mr Peter Edwards:** My name is Peter Edwards and I'm with Labatt's Ontario Breweries; specifically, I'm with Metro operations. I would like to thank everyone for having us here today. I know it's late in the evening and you've had many presentations. I assure you that I've come here tonight not really to give you a lecture; you've probably heard so many lectures over the course of these hearings you don't have to hear another one on what is good or bad in this act.

Instead, I've come to have more of a conversation on different elements of the act. There's not going to be a specific question period, so you can start right now if you want to ask me questions. Everything I am going to be saying will deal with individual elements of some of the difficulties that we see with the act and the proposed amendments.

There are some good things coming out of the changes; it's not all negative. In my first presentation to Mr Mackenzie a number of months ago, we mentioned a whole series of those. However, there are some things that could cause the manufacturing sector in Ontario some significant difficulty. I think a number of these changes have been crafted with the retail sector in mind and not necessarily the manufacturing sector.

I'd like to speak initially on the consolidation of bargaining units proposal. The current proposal seems to derive a lot of its history from work that has been done in other areas and in different countries, and also amendments to the Labour Relations Act under the construction industry sector where we brought a lot of disparate units together and organized and synchronized their bargaining, thereby reducing the number of strikes and lockouts and industrial disruptions. We brought a lot of harmony to the Ontario workplace, but it also had a price. We've also seen examples in Ontario where a single plant may have five different unions representing the various crafts and trades and production operations.

It seems to make sense if you look at that and say it would be good to stop all those various strikes, lockouts and sets of negotiations; you would spend more time focusing on improving the workplace relationship. However, if you adopt the proposal as it's laid out, you're going to increase the potential of industrial conflict in Ontario, particularly proactive walkouts, and additionally you're going to reduce the level of investment in Ontario. I'll explain that a little further.

In the construction industry you have a whole series of very small employers that negotiate contracts with the various unions. If they go on strike, nobody can buy those

services; they're just gone. However, if you're in the industrial sector, as is Labatt's, and we went on strike, because both our Toronto and our London operations were under the same union and we were totally shut down, then the United States breweries and Molson would pick up our slack. When we came back, we would have a fraction of the market we had before. That would probably cripple us over the long run. From an economic standpoint, it would mean to us if we were going to invest we wouldn't want to have more than one operation in a province like Ontario because we'd be putting all our eggs in one basket; we'd be dropping our production.

Similarly, it doesn't really deal with the workers' issues either, because if you look at the demographics of the two plants, Labatt's Metro has an extraordinarily young workforce; the average age is under 40. If you look at the London operation, which has been there since the inception of Labatt's, the concerns are with pension entitlements and packages around that, whereas the Toronto employees are looking strictly for wages.

In those cases, to bring those together under one unit in negotiations you're having two disparate groups' interests forced into one element. They're not reconcilable. We have enough difficulties getting through negotiations now without forcing these two units to agree on one identical contract. The contracts are separate and they deal with the specifics of the location.

Specifically, in London we do all our computer-aided manufacturing production for Ontario and in Metropolitan Toronto we do all our draft production for Ontario. There are whole segments of the collective agreements and the local agreements that deal with the specifics of those operations. I know that the amendment says, "Well, if they're not fundamentally different," but that's a hard decision to make, because fundamentally those operations are the same: They produce beer and they put beer in the appropriate package, but they are clearly different operations.

Similarly, if you look at the paper industry, there are companies like Abitibi-Price that have numerous manufacturing facilities in Toronto with the same union, producing entirely different products or even sometimes similar related products. But if you shut one down, you shouldn't have to link it to the other and therefore shut down the other. You're creating a situation where the demands of both will feed off each other and eventually close down your operations in the process.

I think we're not getting at the heart of the matter with the consolidation of bargaining units either. One of the problems in the past and that continues is that you have multiple unions at a single location. For example, at Labatt's in Metro we have two unions. We have the International Union of Operating Engineers with 13 members and we have the Brewery, Malt and Soft Drink Workers with approximately 480 members.

During the last round of negotiations we concluded an agreement with the Brewery, Malt and Soft Drink Workers, but when it came to concluding one with the International



Union of Operating Engineers we couldn't come to an agreement. It came to a point in time where they were going to shut down our operation for the sake of 13 members, of whom actually only three were working at any given time.

It doesn't really seem to make sense that you can have these two disparate elements. If you are going to have consolidation, consolidation makes sense at a local site. In a broader sense, it doesn't make sense to have it across the province.

Sectoral bargaining, which this is really a subset of, won't work in a manufacturing environment because of the substitutability of the product. It'll move in from the outside. If we end up closing down our whole operation, someone else will take it from us, and that someone comes from the United States. That's our major threat, as everyone knows, that we're concentrating on now.

This leads me into another aspect of it, which deals with the operation of facilities during a strike or lockout. If the status quo were to remain in the consolidation of bargaining units and in a year and a half, when our contracts expired again, we were to have the Operating Engineers and the Brewery, Malt and Soft Drink Workers, if for some reason we had difficulties with our operating engineers again, it had been our intention, under this collective agreement, to attempt to operate our plant with the two people in the plant who are certified operating engineers and management and bring in a third person from London who works there in our engineering department. This would allow us to keep our over 480 employees producing beer at our Metro plant while we sorted out our difficulties with our operating engineers.

However, under the new arrangements that wouldn't be so. We'd have to shut our operation down and the tail would be wagging the dog. That's one of the difficulties if you don't address the larger issues, such as fragmented bargaining units, and if you put in a plan something like no use of outside management workers in a location during a strike.

Another issue that has been dear to our hearts recently is the negotiation of closure packages in those discussions. During the term of a collective agreement, during the last round of bargaining, we had extensive discussions regarding our closure packages. Since then, we've provided a package that provided \$1 million in additional benefits in our Waterloo closure, and we still had measurable difficulties in those areas, as you may be aware.

I'm not really sure what the benefit would be of institutionalizing further conflict. Good parties will meet and discuss and come to a conclusion and a settlement, which is what we've tried to do. If there's no binding power and if there's no incentive to come to an agreement, then why have that in the legislation? It just seems to be spurious or something that, by its ambiguity, will cause us grief in the future.

Some of the other problems we have are with the rules around third-party picketing. In some operations it seems to make sense; but with respect to our Brewers Retail, which Labatt's is part owner of, we're concerned that the presence of third-party pickets may disrupt the operation

of malls, mall sites and retail store operations. That's something that is causing us some concern.

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It's difficult enough to get people to purchase your product any more without adding that element of third-party picket. In fact the pickets can have such a negative effect that we recently lost a day's production over a picket that didn't relate to our facility, and we'd like to see that limited in the future. Pickets do have a place in and associated with the main company and in the main location that's being struck. Spreading out across the country or across industrial locations only further antagonizes both sides and, I think, entrenches and makes a mature relationship impossible.

Those are the key elements we're dealing with today. The only additional one we had that isn't directly relevant to Labatt's, because we're virtually completely unionized, is what we call the issue of workplace democracy and that comes in two areas.

One is the use of a final vote before a strike, which we think is necessary, that all employees must be given an opportunity to vote on the final package. We'd like to see that they could vote on subsequent packages, although we can understand the reticence if they didn't, but all employees must be given that opportunity.

Similarly, with the proposed amendments to the certification, we feel that all employees must be given a secret vote if they're to join a union in all cases. We're eliminating a lot of the steps, or it is proposed that we eliminate a lot of the steps in the certification process, and if that goes through you still have to give the voice of the people its opportunity. It was known in Plato's time and it's known now that if you ignore that voice, you do so at your own peril, and I think we've got to embed and institutionalize that element of democracy into the Labour Relations Act when we put those new regulations in place.

That's really what we have for you tonight. It's not a lot. We had a very few small concerns. We are pleased to see some of the changes from the original proposals to the current proposals. We think there's a way to go yet but, like I said, you've heard it from everyone. You probably didn't need much more from us. I thank you for your time, and if you have any questions, I'd be happy to entertain them on how these will affect the brewing industry.

**The Chair:** Thank you, sir. Ms Murdock, please.

**Ms Murdock:** All right. On the scenario that you gave in regard to the operating engineers where you would use two operating engineers, managerial staff and one outside manager brought in from London—

**Mr Edwards:** If we had to. We'd have to consider that as an option. The operating engineers basically provide the steam to the plant to run the various elements of it. They run the boiler system and you traditionally use a very small number. Depending on your arrangement, you can use as few as three or four operating engineers.

**Ms Murdock:** That's for safety reasons—

**Mr Edwards:** For safety reasons is exactly right.

**Ms Murdock:** I understand that, but these two operating engineers are not part of the bargaining unit and are managerial staff.

**Mr Edwards:** Yes. They're certified operating engineers who, through time, moved into management positions.

**Ms Murdock:** Okay, because under the amendments the use of managerial or supervisory staff is still allowed.

**Mr Edwards:** Not from other locations, from what I'm given to understand.

**Ms Murdock:** Not from other locations, that's correct. You wouldn't be able to use the London one.

**Mr Edwards:** But without the London one we wouldn't have enough people to do it by law. There's a legal number of people you have to have in a steam plant.

**Ms Murdock:** I see.

**Mr Edwards:** Those are the criteria we're trying to meet. Additionally, that would really only help us in a very short period because we can't run these people 24 hours a day and if we weren't able to use our—

**Ms Murdock:** It's a good idea not to, yes.

**Mr Edwards:** Yes. If we weren't able to use our managerial staff, we'd be in a position very quickly to shut down and then we'd have a large number of disgruntled brewery workers on our doorstep.

**The Chair:** Are you going to leave time for Mr Hope?

**Ms Murdock:** Sure.

**Mr Hope:** One of the areas you touched on dealt with the employment standards, which is not one that's being talked about too much, but I'm glad you brought it up because I'm trying to get a perspective of what you were saying. You said you've worked out in Waterloo a closure or a massive layoff—I'm not sure. Was it a plant closure that was there?

**Mr Edwards:** It was a plant closure.

**Mr Hope:** An agreement that made sure workers received their wages and stuff. I have a case in my own riding in Dresden where a plant just locked its doors and left. Workers in Dresden are owed \$16,000 and there is nothing there for them. Are you saying the legislation doesn't have enough teeth in it?

**Mr Edwards:** What I'm saying is that what you're proposing there now, I think, will only institutionalize conflict. It's not really addressing the issue of want. I understand and sympathize with the people who lost their jobs in Dresden and I know that in the last session of the Legislature numerous attempts were made to remedy either the Bankruptcy Act or the directors' liability act to get those lost wages back. What we're doing here on the closure package would not prevent somebody from walking away from an operation. Discussion and consultation are excellent tools for mature parties.

**Mr Hope:** He had a key role about mature parties. That's what I'm trying to get at with those workers. It sounds like your corporation has done its most corporate citizen justice to the workers, but what about those corporate citizens who do not serve justice to the community they've been in? Because not only do you victimize the families

but you also victimize the community. I used those examples in Dresden because I know workers who have read the employment standards part of this legislation are saying it's not tough enough and it has to go further to protect other people who may be victims of plant closures.

**Mr Edwards:** Like I said, there's an old saying that when all you have is a hammer, everything looks like a nail, and I think that's the problem here. We've got a tool and we're trying to use the tool we have in our hand at this current time to solve a problem that can't be solved with the tool we have.

**Mr Offer:** Thank you for your presentation. During the presentation, you mentioned offhand that you had lost a day's operation due to a picketing that took place which didn't affect you. I'm wondering if you could expand on that, because there is a provision in this bill where that may become more common than is now the case, and I'd like to hear about your experiences.

**Mr Edwards:** It was slightly over two weeks ago. I'll relay the details of the event. We'd just celebrated reaching a newer percentage in the draft market than we'd previously achieved before. I was getting up to come in. We were having a barbecue for the people coming off shift. I received a call that there were pickets outside of our operation. These pickets were some employees from Waterloo, junior employees who weren't going to get positions. They would have their severance packages and of course be entitled to part of the \$1-million relocation package, but there were no new positions for them and they felt something else should be done.

Our workers crossed the line, but in sympathy refused to work. Consequently, we were left with a plant that was running at 1,500 bottles a minute and nobody standing at those machines. It was quite a hairy time. We eventually brought the plant down, and before we could speak to the Waterloo pickets and point out what they were doing to us, we lost production.

Eventually you're put in a position where you wonder about the viability of a plant if you can't count on it for that production. Certain of our products are time-critical and can't be left in a phase. For example, our Genuine Draft is very time-critical. It has to move from one phase to another with lightning-like precision; if it doesn't, you lose a large batch of product and potentially short the market.

These are things we're worried about, that pickets picketing us could cause the sort of disruptions we characterized with BC a decade ago, when their places were up and down like—in fact, we had a brewery shut down in BC because we were picketed by BC Tel, because we had telephones. We're trying to limit the strikes to those areas which make sense, and if you're going to have an information picket or a strike picket, then have it at the location of the corporation or specifically the operation that is being struck. To fan it out across the organization just seems to have a negative and destructive effect.

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**Mr Phillips:** Thank you for your presentation. I actually used to work in the London plant at Labatt's.



**Mr Edwards:** You know of it then.

**Mr Phillips:** Yes, I was on strike in I guess the late 1950s, is my recollection.

You have breweries in each province, and therefore I would think you're fairly familiar with the legislation across Canada in the various jurisdictions. We've been told this is just bringing this in line with what exists in other jurisdictions, so what are we worried about? Do you have a view on where it will leave the Ontario industrial relations package vis-à-vis other provinces when this package goes forward?

**Mr Edwards:** I'll give you a little bit more on my background. I did a master's in industrial relations at Queen's and then I worked with Abitibi-Price, the paper organization, in all the various provinces doing labour relations, and I'm familiar with all the acts.

Yes, some of the things that are proposed have been tried in other places. Specifically, the strike prohibition has been used in Quebec. The studies can go either way on that. In the Quebec environment, what I found through my working there is that the reason the anti-scab prohibition works is because of the environment and the people. I don't think it relates directly to the legislation itself. It depends on attitude.

If you look just south of the border and you go to Wisconsin, there is the very well-known case of Kohler where, when faced with similar prohibitions from the National Labour Relations Board, just unbolted the equipment and moved across the state line, even though it was facing regulations that would prevent it from doing what it was doing. It found a way around them. Like I said, it relies on mature parties.

I was looking at the statistics of the labour relations board itself the other day. Less than 6% of negotiations end in industrial dispute, a very small number. If you look at that number again, I think you would have an even smaller number where they actually run through. What I'm worried about is in those few instances where it's going to be critical for an employer to run.

Personally, from Labatt's standpoint, we can't see it happening now; it's not in our makeup. It was the same when we were in the paper industry; it wasn't in our makeup. It was the same with the cement industry when I was associated with that. It wasn't in our makeup to run through strikes, because we had too much invested in equipment and relationships. But if I were a small manufacturer and it was, "Get it out the door or lose the major Ford contract," I'd have to get it out the door for myself and for my employees in the future.

**Mrs Witmer:** Thank you very much for your presentation. I'm quite familiar with the Waterloo situation, as I represent Waterloo North. I certainly know the difficulties that have been experienced there.

You refer to the fact, in number 2, that you feel all employees should be free to determine whether they wish to be governed by the act.

**Mr Hope:** That's not his presentation.

**Mrs Witmer:** Oh, I'm very sorry. I thought this—

**The Chair:** Mrs Witmer, never apologize; never explain. Just go ahead. None of us noticed a thing.

**Mr Edwards:** I was wondering. I didn't remember numbering the points but I thought, "My God, I sounded rather clever on that one."

**Mrs Witmer:** We've had so many presentations today where we do have a written presentation but the verbal presentation doesn't seem to coincide.

Anyway, my question to you: Are you in favour of a secret ballot vote for employees?

**Mr Edwards:** Yes. I think it's just an element of democracy. I understand the various things that have happened in the past. There's been intimidation on both sides, but I think once you sign a card you're committed to a course of action.

I was thinking about this on the way down, the whole concept of secret ballot and signing cards. A card could indicate action. If you say that once you've signed a card you don't need to vote any more, then you would say that within the United States you probably don't need an election, because most of the people who carry cards are card-carrying Republicans, so therefore you no longer need elections because, as long as the number of cards are signed, you've predetermined the result. I think it's got to be you and your pen and your conscience marking a ballot, and that's how you would make your decision, as we do every time during elections.

**Mrs Witmer:** I'll go back to my original question. We had a presentation today by Project Economic Growth, and they put forward a process for the secret ballot vote. Do you have any suggestions for what type of process might be used to ensure that all employees are fully informed and do have that opportunity to freely express themselves?

**Mr Edwards:** I'm familiar with Project Economic Growth's platform and its approach, to the extent that we've been somewhat associated with some of its views. There are a number of ways you can develop to find it. PEG's is one alternative and there are some good points to it, and obviously people have found some negative points to it. As long as both parties are able to express their views in a non-intimidating fashion and an individual is given an opportunity to express himself or herself in a secret vote, I think you're going to get industrial democracy.

We've come a long way. There are still the bad employers and there are still the bad practices but, like I said, it has to come down to the board's power to come in and set up a vote, and I think it's fairly easily done.

**Mrs Witmer:** You know we're into the fifth and final week of hearings and after this we're going into clause-by-clause discussion on Bill 40. What recommendations, briefly, do you have for the committee? What should we be doing when we finish on Thursday?

**Mr Edwards:** Talk about a loaded question. I think the committee's been extraordinarily patient in going through the large number of presentations on all parts of the industrial relations community. Go back, distill, don't worry about ideology on either part. Do what makes sense for a democratic workplace and what makes sense for an efficient and productive Ontario. I think if you use those

guidelines, as broad and vague as they are—it's like a motherhood statement—it'll be fine.

**Mrs Witmer:** Thank you very much. I appreciate your coming here.

**The Chair:** Thank you, sir. On behalf of the committee, I want to say thank you to Labatt's Ontario Breweries and to you for speaking on their behalf on this issue. You've made a valuable contribution to the process. We're grateful to you, sir.

**Mr Edwards:** Thank you.

**The Chair:** While we're waiting for the next participant to come forward, I want to ask the committee to note that we've received a written submission dated August 27, 1992, from Peter Kirkby. Mr Kirkby had sought standing in front of the committee but was among those people who, simply because of the time constraints, wasn't successful. He has been courteous enough to prepare a written submission, which is detailed, and has been provided to each member of the committee. It also was filed as an exhibit forming a permanent part of this committee's record. I want to thank Mr Kirkby for his interest in these matters and for his willingness and eagerness to provide that written submission.

JAMES WINTER

**The Chair:** The next participant is Professor James Winter. Professor, please go ahead.

**Dr James Winter:** Three weeks ago, when these hearings were last in Toronto, an event took place which is of grave, historical significance, although it went unremarked in terms of the mainstream press. The major newspaper corporations, and indeed the Canadian Daily Newspaper Association itself, made formal presentations before this committee, as you'll recall, opposing Bill 40. The committee heard from two newspaper chains, Southam and Thomson, which control 70% of English-language daily circulation in this country.

The committee heard on the same day from Michael Doody, corporate secretary for the Thomson chain, and David Crisp, a vice-president of Hudson's Bay Co. Both opposed Bill 40 and both ultimately report to Ken Thomson, who also owns the Globe and Mail. I don't believe Mr Doody mentioned in his presentation that the pension fund trustees at OPSEU are boycotting Thomson stocks because they object to the company's labour relations practices. The news article I read didn't elaborate on this, but I know that in the past the notoriously thrifty Thomson chain has been known to complain to employees that too much toilet paper was being used in the women's washrooms. They've also demanded that reporters buy their own copies of newspapers to read their own stories in an attempt to save costs and boost circulation.

It's not my point to centre out the Thomson chain. Indeed, Bill Ardell, the new CEO at Southam, recently said that 500 of Southam's 1,600 employees in Vancouver were excess baggage and that cutting them could save the company \$30 million. What this demonstrates is that newspapers have become large, diversified corporations. One result is that freedom of the press, as we know it or

used to know it, has disappeared. The blatant public lobbying by newspapers over Bill 40 is unprecedented in recent Canadian history. It poses a direct challenge to journalists' claim that they're objective, balanced, socially responsible watchdogs for the public's interest.

The English poet John Milton asked in the 17th century, "Whoever knew truth put to the worse in a free and open encounter with falsehood?" For the public, this myth of an unrestrained clash, a free market of views, continues to exist. Unaware of the corporate links, they still expect accurate and fair reporting. People continue to subscribe to the notion of an objective press. Part of the reason for this is that the media have convinced us that the business side of things is distinct from the news and the editorials, but this defies common sense and it flies in the face of the sociological evidence.

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Newspaper owners hire and fire. Managers assign and edit, making decisions about angles, play and prominence. All of these are subjective rather than objective decisions. The end result is that the news reads largely as these people intend it to, no matter what the intentions of individual journalists might be.

Let's use as an example the reporting on this committee's hearings over the past three or four weeks. Time after time, the corporate perspective predominates. From listening to and reading the media, one would think that this was a very one-sided affair.

It's not entirely one-sided. Occasionally there's an item with a labour perspective, for example, but overwhelmingly the emphasis is on the corporate position, with alternative views relegated to what's called the "back of the bus." We know from newspaper reading habits, for example, that readers seldom go beyond the headline and the first few paragraphs, so when the other side is sandwiched into the last few paragraphs, hardly anyone gets to see it.

We have, by the way, two prime examples of this sort of thing in two of today's Toronto daily newspapers that I picked up on the way here. The Globe and Mail, for example, from the hearings yesterday, headlined "Strikebreaker Proposals Called Too Restrictive: Labour Bill Would Strip Away Employers' Rights, Business Groups Say." That's the angle they choose to focus on from yesterday's presentations. Here's the Toronto Star: "Business Group Still Condemns New Labour Plan." This is when the Toronto media came back to it after the hiatus which occurred when your committee left Toronto and you and your committee and the issues you're discussing disappeared from the agenda.

Thus, what you have is newspapers taking a corporate stance, a management stance, at the same time that they have an obligation to report on a debate in an unbiased fashion.

Despite the prevailing myth that newspapers are watchdogs for the public interest, they've been almost entirely swallowed up by big business conglomerates with vested interests. This means that public debates such as this one are reported largely in a one-sided fashion, with devastating results for the state of discourse in society, and indeed for democracy itself.



Conrad Black is perhaps the epitome of Canadian corporate capitalism. His firm, Hollinger Inc, used to be a holding company for Dominion stores and Massey-Ferguson and the like. Now it's a newspaper holding company with 262 newspapers on four continents, including 42 in Canada.

In my recent book, *Common Cents: Media Portrayal of the Gulf War and Other Events*, I quote from David Radler, the right-hand man to Conrad Black, in an interview with Peter Newman. He said:

"If it should come to a matter of principle, I am ultimately the publisher of all these papers, and if editors disagree with us, they should disagree with us when they're no longer in our employ. The buck stops with the ownership. I am responsible for meeting the payroll; therefore, I will ultimately determine what the papers say."

I think that's a refreshingly candid, if chilling, admission of the impact of ownership, which contradicts claims made by chain owners, stretching back for decades, that newspapers have what they like to call "local autonomy" despite the chain ownership.

Industry ownership indicates that newspapers would back business in controversies such as the one over Bill 40. The sociological literature, including my own research, indicates that this is reflected in media content. To a very great extent, one would then expect to find it in public opinion, and subsequently in any laws that are enacted.

With no intention of underestimating the importance of what we're doing here, let me suggest that the current controversy over labour law reform may be seen as a public relations war, with corporations and the opposition on one side and labour and other public groups on the other side. But if newspapers largely line up with other corporations to propagate owners' self-interest, then who will provide the public with a balanced account? Who will help us to filter this propaganda that's coming to us?

If the media have become to a very great extent just another lobby group, then this represents a dire threat to democracy. With no wish to sound alarmist, I suggest to you that this is the case and that you consider it in your deliberations and in your assessment of public opinion regarding the OLRA.

Since I gather that the primary, if not the sole, purpose of these hearings is to sound out public opinion, I suggest that these observations are of critical importance. Outside of this room, the public is witnessing what is largely a one-sided debate, and I know from what I've already seen in this room in a short time that's not the case within these hearings.

**The Chair:** Thank you, sir. Seven minutes per caucus.

**Mr Phillips:** Maybe I can start off. Just to follow up the conspiracy theory here, I gather, because you're a professor of communications, that you've done a fairly extensive study on this matter, and I would appreciate just the analysis you did. I gather you've kind of monitored the papers. Is it mainly the newspapers you see this conspiracy with?

**Dr Winter:** I don't see a conspiracy per se. There's not a conspiracy theory here in the sense of people sitting in a back room and conspiring with regard to the day's

events. I think it's a much more complicated situation than that. It has to do with economic ownership and underpinnings, for example. It has to do with a lot of the professional norms and so forth in the journalism field. It has to do with notions, for example, such as objectivity and who is sought out in order to obtain their views and so forth. So it's a very complicated process, and I don't use the term "conspiracy" and I don't see it in that way.

**Mr Phillips:** But I gather you believe that the papers are in some way conspiring to distort the study.

**Dr Winter:** I've talked to, I've taught, I've been a journalist. I don't think journalists conspire. I think to a great extent they're actually oblivious to what it is they do and they manage to rationalize what it is they do. Again, that "conspiracy" word is a nasty word that gets bandied about.

**Mr Phillips:** In your analysis, what percentage would you say was taking the business side of the argument and what percentage of the stories have taken the other side of the argument?

**Dr Winter:** I'd have to be guessing to put it in terms of percentages, because I'm not a number cruncher and I don't have numerical totals. I think, with a growing number of my colleagues, that we get into a great deal of difficulty when we try to make sense of society around us by converting it into numbers. I would just say that the overwhelming emphasis—this was not something that was planned. In fact, I opened these newspapers up in the hearing room.

**Mr Phillips:** I'm more interested in not just two papers today; I assume you've done the five-week analysis.

**Dr Winter:** Yes, I have. This is quite typical, however.

**Mr Phillips:** Could you give me the analysis, just how it has split?

**Dr Winter:** I can't give you any numbers. I would say that the overwhelming emphasis has been in terms of the business perspective.

**Mr Phillips:** On this theory, is this kind of the tip of the iceberg? Is this legislation and the way they've covered it just part of a bigger scheme that's a plot here?

**Dr Winter:** A bigger scheme and subplot?

**Mr Phillips:** Yes, in the sense that newspapers, I gather—are they just doing it on this issue or are they doing it on more than just this issue?

**Dr Winter:** I think more generally the media, and newspapers specifically, tend to reflect corporate interests across the board. For example, if you looked at the coverage of the free trade agreement, the North American free trade agreement as well as the FTA, you would find somewhat similar coverage. You'd find that they feel free trade is a good thing, for example.

**Mr Phillips:** Are we facing the same issue, in your mind, on radio and television too?

**Dr Winter:** Yes, largely we are. In the broadcast media they're under different constraints, to a certain extent. For example, the time constraint means that coverage is much more superficial than it is even in newspapers. I

think some of the things we find in the printed media are heightened, in effect, when it comes to the broadcast media.

**Mr Phillips:** Scary. Thank you.

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**Mr Offer:** Three questions? Thank you very much.

**The Chair:** No, not three questions, Mr Offer, three minutes.

**Mr Offer:** That'll be enough.

On the second page, you spoke about this current controversy over labour law reform being seen as a public relations war, with corporations and the opposition on one side and labour and other public groups on the other. My question is, is that your position or is that how you feel the positions are being conveyed, notwithstanding what's being heard in the committee?

**Dr Winter:** I think that's one way you could look at what's happening, if you like.

**Mr Offer:** I guess when I read that I just didn't know if those were your words or how you are saying the media is portraying this controversy.

**Dr Winter:** No, I don't think the media are necessarily portraying it in that way, but I think it could be seen as that, as a propaganda war, if you like.

**Mr Offer:** I bring that point out because obviously, for those who have been watching through their cable TV, it's becoming very obvious that it's not just business against this reform, or having concerns with it, and labour being in favour. We've heard concerns from other than business. We've heard concerns from a variety of social service agencies, from school boards, from municipalities, from hydro services, and from engineers having public safety as their primary focus, who have concerns with this legislation.

I think, in fairness, we've heard from some unions that have some concerns with this. I guess I hope and I trust that it's clear to those who have been watching that there are broad groups of individuals, groups and associations that have specific concerns with aspects of the legislation.

**Dr Winter:** From my observation of the media, I wouldn't say that's the case. What tends to get reported is, "The chamber of commerce said this; the union said that." I don't think the broad perspective is portrayed, any more than in tomorrow's papers and tomorrow's television newscasts we'll see a good cross-section of the people who appeared before you today. Again, because of the time constraints, effectively, but also other biases, they tend to be very selective.

It's a very subjective kind of undertaking, really. I don't know how many people, how many presentations, you would hear in a day. Would it be 16, 20, something like that? Most of the time we're just reading about one or two or three, so that's not a very good ratio in terms of the media portrayal.

**Mrs Witmer:** I appreciate the analysis you have provided, although I question the conclusions you've arrived at. You've indicated that you feel this government is being attacked by the corporate interests that manage the news-

papers. If you were to speak to the Prime Minister of this country, I think you would probably receive from him a similar comment, that he feels he's also being attacked by the media, because I think the role of the media is to make sure they share with the public all information possible.

Any government in power has an opportunity to disseminate information on behalf of the position it's taking, so I think the media have a role to make sure that the other side of the coin is presented as well. I know, having been on a school board, the same thing happened with us. We were often under attack by the media. You see city councils under attack by the media. So I'm not sure if we can say that the analysis here is totally accurate.

**Dr Winter:** Well, the media certainly have developed the habit, become accustomed etc, to being very critical of governments; depending on the government, I think, to a certain extent. But governments are a fairly safe target as well. Especially when they are owned by these large corporations, it's easier to attack governments and public bodies such as school boards and so on and so forth than it is to attack businesses. Generally, again coming back to the sociological literature, I think the finding has been that governments make rather safe targets.

At the same time, coming back to Brian Mulroney, there was a letter about a week or so ago in the *Globe and Mail* in which they were talking about the *Globe's* penchant for running front-page pictures of Brian Mulroney. One reader was particularly disgruntled about that. I think about two days later there was another big spread of Mulroney on the front. I think a number of the major Canadian dailies have been quite favourable towards Mulroney when you consider where he is in the polls and what people in general seem to think about him.

Let's use the recent constitutional discussions and agreement and so forth; economic union, the idea of that sort of thing taking place. I think the newspapers and the media generally have been very kind and very favourable towards him. I think they were reasonably favourable towards the GST. I think they've been pretty good in terms of free trade. There is some disgruntlement, if you like, but by and large they've supported his policies.

On the other hand, it really has, in my own reading, been a very critical press when it comes to the NDP in Ontario and the budget deficits and "spendthrift socialism" and so on and so forth.

**Mrs Witmer:** However, by the same token, if you want to take a look at the constitutional debate, I think they have been very complimentary of Mr Rae and, as you say, not only has the Prime Minister's picture been on the front page, but they've also been featuring Mr Rae. So certainly there is some fairness and there is some balance.

**Dr Winter:** Oh, yes. I wouldn't for a minute suggest that the coverage is totally one way or totally imbalanced. I like to describe it as overwhelming, though, in terms of my own analysis.

**Mr Turnbull:** I've obviously been following the press since this process began. I, like you, have not kept a running total of how many stories were on the union side and how many were on the side of management or chambers



of commerce. I have to say I've read quite a lot of stories with the unions' point of view reflected in total, as much as a newspaper story can do.

You seem to be coming to this with a very strong political bias in this comment. I know the kinds of discussions that go on in Queen's Park in our own caucus, how fed up we are at times that we don't get coverage of things we think we should get coverage of and credit for. For example, Mrs Witmer put forward a proposal last year to have secret ballots. The Minister of Labour pretended there was no suggestion of this during the consultation process and, in point of fact, there were many presentations. We haven't seen that in the press.

The suggestion was made after the recent British election that the press cost the Labour Party the election, but I have to tell you, it's the view of most Conservatives that the press is, by and large, rather left-leaning. Certainly, in looking at the kinds of reports we get out of Queen's Park, they're fairly left-leaning, although there seems to be a rage—you commented on Mulroney's standing in the polls, and you seem in some way to equate that with the fact that he's had good treatment considering his standing in the polls.

If that were the criterion, I think Bob Rae would have had a lot rougher passage, because his standing in the polls is plummeting like crazy and even his core voters are disgusted. People who have voted for the NDP all their lives are disgusted, and a lot of the stories haven't got into the press as to the things he's done.

So I think you've come—I've got to tell you, my opinion is—as an apologist for the NDP. I absolutely discredit everything you've had to say.

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**Dr Winter:** Well, I can't comment on whether or not you're an apologist for the NDP, but I will say that if you would like to take a look at my book, *Common Cents*, recently published—

**Mr Turnbull:** Based upon what you've got to say, I don't think there will be any common sense.

**Dr Winter:** —you'll find that I'm quite hard on the NDP, in fact, that I'm not in the camp of the NDP or anyone else, and that I come to this as an academic with more than 20 years' experience of studying and researching the media and how they operate.

**Mr Turnbull:** And were you pressed to report stories in a certain way when you worked in the media?

**Dr Winter:** Yes, absolutely.

**Mr Turnbull:** By what organizations? What did they press you to do?

**Dr Winter:** To report corporations in a favourable way as opposed to a negative way and to bury material which was unfavourable. And it happens on a daily basis.

**Mr Turnbull:** You think that people like Colin Vaughan in the *Globe and Mail* are reporting with a bias towards the corporate sector? I think he'd be rather annoyed if you said yes.

**Dr Winter:** I wouldn't single out any individual journalist, but I will say that the overwhelming predilection is towards being quite favourable towards business.

**Mr Turnbull:** Boy, you must not read the *Toronto Star*.

**Dr Winter:** I certainly do read the *Toronto Star*, quite regularly, and the *Globe and Mail* and numerous other publications.

In terms of your comment that the press is left-leaning, this is a myth which I think essentially dates back to Spiro Agnew's days as the Vice-President of the United States, some of his hysteria in terms of the plots that are out there and so forth. The sociological literature in fact indicates that it's quite the reverse, that journalists' values are quite middle-class, quite to the right or, at very best, centre, politically, socially and so forth.

This is a myth that's propagated in our society largely due to the influence of organizations such as the Fraser Institute in Vancouver, which is ultra-right-wing and which, on balance, on a monthly basis in its publication, bashes the press for being leftist, in particular the CBC and so on. But the academic research indicates that that is really hysteria.

**Mr Turnbull:** I think it's usually the left-leaning academics who are reporting that and suggesting that the research is contrary to that.

**Dr Winter:** In my experience, there are not very many left-leaning academics out there. If you could come and observe our faculty association and some of the discussions that go on—

**Mr Turnbull:** I think we've had two of them today, thank you.

**Ms Murdock:** I'm glad you came; this is very much a different perspective. I'm really glad you've referred to the presentations that were made to us in the second week here in Toronto by the newspaper associations, mostly because they made a case for themselves about news being—and this is a quote—"more perishable than lettuce and tomatoes." Given the technological age and the computerized system, I have some doubts about the veracity of that statement. I'm wondering, as you do so much work in that area, what your comments in that field would be.

**Dr Winter:** The only way in which I could see that would make any sense is in the sense that people don't want to look at yesterday's newspaper, or at least that's the popular notion of it: something is news, it's in the news for a very short time, and then people aren't interested in it.

But in reality, as you know, there are recurring themes in journalism—the Loch Ness monster and so forth—so old things are always coming up and being re-represented. If a journalist or an editor or publisher wants to inject something into the news, all they really need to do is to find a news tag to tie it to, some local event.

**Ms Murdock:** I don't know what the correct term for them is, but newspapers and media generally can hook into news services, can they not?

**Dr Winter:** Oh, yes.

**Ms Murdock:** And as a consequence can pull stories from other reporters who aren't on strike.

**Dr Winter:** It happened in the case of the Toronto Star, for example. When it was on strike, they were running CP stories written by reporters across the country, and indeed around the world.

**Ms Murdock:** So in actual fact—what I'm saying and what I'm asking you and what you're confirming, I think—the news can still be amassed and printed even though there is a strike on.

**Dr Winter:** Oh, certainly. One of the major problems we have with newspapers today is that they don't want to hire reporters. They want to just run wire copy so they don't have to pay any wages and benefits. The wire copy comes quite cheaply.

This is a problem going back in Canadian history. In 1912, when Canadian Press was founded, it had an option of putting its own reporters around the world or buying all the news from around the world that came out of Associated Press in New York, for \$5,000 a year. You can guess what they chose. They chose to take the AP wire service.

As we have this corporate ownership, with the bottom line being profit, what's happened more and more is that they rely more on the wire services and less on their own staff.

**Ms Murdock:** Do you see this trend that you've reported in your presentation today in the American papers as well? Or do you read those?

**Dr Winter:** Yes, I do. I think the same trend is there, and American academics are commenting on it quite frequently. In some respects their problem isn't as bad as ours, although they're quite upset about it.

I mentioned some of the figures from Canada in terms of Southam and Thomson. The largest chains in the United States would be Knight-Ridder and Newhouse. They would have something like 10% of their daily circulation locked up; 10% and 10% for the two of them would be 20%, versus 70% of English-language daily circulation in Canada. That's a reflection of the fact that they have about 1,760 daily newspapers in the States, and we have about 114. So there's quite a difference. The concentration there is not nearly as bad as it is here.

**Mr Hope:** Your presentation today is interesting. I thought it was just me being one of the bad guys and that the media are just reporting fact. Your presentation today really sets into the picture Tommy Douglas put together called Mouseland, which really put the true perspective of working people trying to get their voices heard.

I remember some controversial legislation like Bill 208, health and safety, where companies in Windsor were screaming, "We're going to shut down all the automotive." They got the headlines that workers were going to shut it down. We ended up on the tail end, and one of the communication strategies we had to use as working people—because we can never depend on our media to do it for us—was to use Rogers Cable TV to get our message across or print our own leaflets or letters to the editor, which were successful.

With your expertise in dealing in the media, is this media coverage driving investment out of this province or discouraging more investment in this province?

**Dr Winter:** Some of the coverage has been so absolutely hysterical, in terms of the editorialists in particular, I would say, that it couldn't possibly but have that effect. It would have to have that effect of discouraging investment.

**Mr Hope:** So if they were to create a true balanced perspective of putting both views, like "Labour Hearings Continue Today" instead of the title you've referred to, do you think that would have a little calmer reaction in the investment community?

**Dr Winter:** I imagine it would. I don't see how it couldn't.

**Mr Hope:** The only thing it probably wouldn't do is allow papers to be sold, right?

**Dr Winter:** Yes, it's partly that, but it's also part of this propaganda war in the lobbying process to try to influence what you people are doing. That may not be intentional in terms of the journalists and so forth, but it certainly is intentional when it comes to the owners and their direct underlings.

It's not just coincidence that the Star and the Globe chose to play up the business perspective in today's paper, and virtually every other day's coverage, with few exceptions.

**The Chair:** We have to move on, Mr Hope. Professor Winter, I want to tell you on behalf of the committee that we appreciate very much your travelling here from Windsor to participate in this process. You've made a valuable contribution and indeed provided a perspective that this committee had not been exposed to.

Your book is *Common Cents: Media Portrayal of the Gulf War and Other Events*. I trust that if people want to buy it in Toronto they can go to This Ain't The Rosedale Library over on Church Street, or if they're in Welland, they can go to For the Love of Books on King Street in Welland, Marjory McPherson's bookshop.

**Dr Winter:** They could order it through any good bookstore.

**Interjection:** How much is it?

**Dr Winter:** It's \$24.

**The Chair:** *Common Cents: Media Portrayal of the Gulf War and Other Events*. Professor Winter, thank you kindly. Have a safe trip back.

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BRANTFORD REGIONAL CHAMBER OF COMMERCE

**The Chair:** The next participant is Brantford Regional Chamber of Commerce. Would they please come forward and have a seat. Please, sir, if these people will give you the courtesy of the time to do it, tell us your name, your title, and proceed with your comments.

**Mr Dan Houser:** Thank you. I guess you guys will have a good essay to write when you're done: "What I Did on My Summer Vacation." I'm here tonight as the chairperson of the political awareness committee of the Brantford



Regional Chamber of Commerce and also as an independent business person.

The Brantford Regional Chamber of Commerce represents over 880 businesses in the region, employing more than 8,000 people. Brantford is no stranger to plant closures, job losses and economic hard times. The decade of the 1980s was a particularly difficult period, but the area struggled through it.

It is now beginning to appear that the 1990s will be no better, as every day we continue to hear of business cutbacks, layoffs and plant closures. The Brantford Regional Chamber of Commerce has seen the cancellation of more than 80 memberships in recent months, more than half of whom are no longer in business. This invariably translates into a loss of jobs for the citizens of the area, not to mention the loss of tax revenue and decreased ability of the government to deliver services at a time when they are most needed.

The world is a shrinking place, and we must concern ourselves with our ability to compete and to be productive. Given this, Ontario's ability both to protect existing jobs and to grow the economy and create high-paying, value added jobs in an increasingly competitive world must be our first priority. We ask the government to tell us how the changes to the Ontario Labour Relations Act will solve the most important issue facing the province today, which is our collapsing economy.

The situation is a desperate one, and what we need most now is a climate that will encourage both new investment and spending on the part of individuals. People concerned about losing their jobs are not likely to spend or make financial commitments. Eventually this becomes a self-fulfilling prophecy, resulting in the very job losses that were feared. Investment decisions are increasingly made in other parts of the world. The uncertainty created by legislation such as that which we are now considering will only act as a further deterrent to having those decisions made in Ontario's favour. What is needed to counteract this negativity is a comprehensive provincial economic strategy plan. Labour reform, if required at all, should only follow such an initiative and should be developed with the view of fostering economic growth.

We asked our membership the following questions on the proposed changes to the Ontario labour laws: "Do you feel the Ontario labour laws need changing?" Eighty-two per cent of respondents said no. The number two question was: "Do you agree with the NDP government's proposed changes to the Ontario labour laws?" Ninety-two per cent of respondents said they disapproved.

The government has stated that these reforms are needed because the existing legislation does not reflect the modern workforce and workplace, which is becoming increasingly service based. However, the very fact that we are drifting towards a service-based economy should be a clear warning of future danger and an indication that fundamental and structural changes to our economy are needed.

An economy that is solely based on services cannot long survive. If there are no valued added jobs in the economy, people will not need or be able to afford the services

being offered. The legislative proposals under consideration do not seem to offer any such change, but appear to be the result of an acceptance of defeat and merely an attempt to provide more opportunity to exploit what little there is left.

The historic role of government in this province has been to act as the balancing force between competing interests and not to take sides or tip the scales in any one particular group's favour. To do this will alienate the other groups in our society and cause a lessening of cooperation and participation.

At times there seems to be a popular myth that the business community is a well-organized and cohesive group with a tight community of common interest. In fact, nothing could be further from the truth as individual businesses, large and small, struggle to survive on their own. However, these proposals have galvanized the business community in its response on this issue like nothing else in recent memory.

The following are responses to an ad campaign. Our members felt these changes would be "disastrous," "would encourage higher prices," "would jeopardize jobs," "will hurt our already fragile business community," "will encourage companies to leave Ontario," and the list goes on. We have attached some of the responses to this report. The reaction should be an indicator for everyone of the gravity of the potential impacts and consequences of this legislation.

At this time, there has been no serious economic impact analysis undertaken by the government to determine the effects that these changes are likely to have on the province, despite the pleas from business that this be done. This means that an accurate and complete evaluation of the changes is not possible. Some economists are now stating that these impacts are not knowable. Given our current economic woes, entering such sweeping changes at this time is playing Russian roulette with our future.

The business community has had a long history in this province of participating and cooperating with the provincial government in developing positive changes for the province. This has led to Ontario having, as it does, the most progressive labour legislation in North America. The business community again stands ready to cooperate with both labour and government and to participate in such a process, but it must be one that is not hurried and where the consequences of any changes are well thought out before they are implemented. Only in this way can we ensure a positive outcome for everyone.

The debate is in a very real sense a debate about freedom of choice for Ontarians. This is not just a debate about unions versus no unions in the workplace. In recent times we have made significant progress towards advancing the rights of individuals in our society. The stated, desired goal in the context of labour relations is and always has been to determine the true wishes of the employees.

Under these proposed reforms, individuals will not be allowed to make decisions about very significant aspects of their working lives in a free and democratic fashion. Our democratic tradition dictates that we determine the true wishes of the people through a secret ballot vote. This

ensures to the highest degree possible that these decisions are made in an environment free of intimidation and coercion. People should also have the right to change their minds. These proposals would eliminate that right. The right of joining or not joining a union, to have a union in the workplace or not, or whether or not to strike, are all choices that should be freely made.

We must also challenge the basic, underlying assumptions upon which these proposals have been formed. We simply do not agree that only through trade union representation will employees be able to improve their participation in the workplace, which will in turn enhance Ontario's ability to compete on a global scale. Indeed, many of the organizations held up as examples of high levels of employee participation are not organized by trade unions. It is possible that making the trade union the sole bargaining agent of the employees could achieve the opposite effect and decrease the participation of the employee. In no way does it assure that any of the wishes of the employees individually, or even as a group, will be taken forward.

We believe it is premature to assume that organized labour speaks for working people in the province, since according to the government's own statistics, less than 40% of working people in Ontario are represented. At the same time, it does not necessarily follow that this is because they have been deprived of the opportunity to organize. Recent polls have shown that more than 65% of Ontario residents have expressed their desire not to be represented by a trade union.

We do not accept that without effective trade union representation the health of the Ontario economy will be threatened by an increasing reliance on low-wage competition which will lower our standard of living. Although the government has said that Ontario cannot compete with low-wage areas of the world, we do compete with these areas every day. We must therefore find ways to compete effectively or face the loss of jobs, particularly those critical value added jobs, to such places.

It does not necessarily follow that only through a policy of low wages will we compete. We must develop ways to compete that will allow us to be so much more productive that we actually earn the difference in those wages, and this is not an impossible task. This can be achieved through improved methods and innovations that will keep us one step ahead of our competition.

Further, as those other low-wage areas of the world develop, as they surely will, their wages will not remain low. This transition was seen in Japan in just the last 20 years, and is now under way in Korea and other parts of the Far East.

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These changes do nothing to alter the character of labour relations in this province but only seek to expand the current system. If acted upon in their current form, they will most probably lead to confrontation on a scale not seen before in this province. If, as suggested by the government, the labour legislation in Quebec has been related to the state of labour relations in that province, then the example of Quebec advanced by the government is not a

particularly good one to illustrate the benefits of those proposals.

Since the introduction of their legislation in 1978, Quebec has had more labour disputes than Ontario in 12 of the 14 years, resulting in 20% more lost time due to strikes. During that period, when the number of labour disputes in Quebec have tended to fall, the numbers of disputes in Ontario have also fallen, and to lower levels than those in Quebec. At the same time, investment in Quebec has been lower and has grown at a rate less than that of Ontario in all but three of the 14 years.

There also seems to be a view by the government that expanded unionization would lessen the adversarial nature of the process. Sweden and Germany are pointed to as an example of places where there is a high degree of unionism and a high degree of cooperation. However, these examples have little relevance to Ontario as, to a very large degree, they have been taken out of their social and legislative context.

The collective bargaining process in these countries is highly centralized as opposed to our system of many thousands of individual companies and unions bargaining on their own in Ontario. In Sweden, for example, there is only one union representing all blue collar workers and one employer federation. As we understand it, one of the key elements that exists in this relationship is the balance of power between the two groups, and with the power comes the recognition that their agreements must be in the national interest. In contrast, unions in Ontario are essentially self-constituted and self-administered without regulation. These proposals fail to take into account these essential and counterbalancing differences.

In summary, the business environment is much more demanding than it was just a few years ago. There is increased competition, causing a change in the way business must react to customers. There has been much criticism of the Canada-US free trade agreement and free trade is often seen as being a bad thing. But the idea of free trade is an idea that has taken hold all over the world and is gaining momentum. It is a reality that must be dealt with. Employers know this and are trying to cope. Those that are successful will be those that succeed in developing a cooperative relationship with their employees and who unlock the potential these employees provide.

We would urge the government to consider carefully the consequences of any changes it intends to make to the Labour Relations Act, since this type of legislation directly impacts on employer-employee relations. The significance of any changes to this critical piece of legislation can hardly be overestimated. Any modifications should not be based or acted upon merely on the basis of a belief system that says these will be good changes because a small sector of society believes that the changes will be good. If required at all, changes should be based on a demonstrated need and the consequences should not be left to chance.

We in Ontario are all partners and are all in the same boat. It does no one group any good to point out that another group's part of the boat is sinking. We need a system of labour relations that will be less confrontational and that will encourage cooperation and participation and



foster growth. There will be techniques employed in other countries that can have relevance to this province, and those should certainly be looked at if the outcome is to enrich our society as a whole and encourage growth. The business community is prepared to participate in any appropriate fashion with labour and government in constructive dialogue on this issue. All our futures are at stake.

**The Chair:** Thank you, sir. Ms Witmer, five minutes per caucus, please.

**Mrs Witmer:** Thank you very much. I appreciate your presentation. You've certainly introduced a few thoughts here that are unlike some of the other presentations we've heard, and I appreciate that.

I'm really pleased you're here because, I have to tell you, during the past four and a half weeks we've repeatedly been told by one of the government representatives that Brantford is in a very good position economically and that there's great investment going into the region of Brantford. I guess I'd like to hear from you personally because certainly the tenor of your presentation this evening indicates to me that, as in other areas throughout the province, you are experiencing in the Brantford region the same business cutbacks, layoffs and plant closures as elsewhere.

I'd appreciate you sharing with us the situation as you see it in the region of Brantford, because you've also said that this issue has galvanized your membership as no other issue. So could you also tell us why this particular issue is of such grave concern to your membership?

**Mr Housser:** Other than the enormous amounts of money our member of provincial Parliament brings to us, we certainly are hurting like all other communities across this province. We have the same problems as everybody else.

To answer your question about galvanizing the business community against this proposal, we've had enormous phone calls not just from our membership. The phone never stops ringing.

**Mrs Witmer:** What are the people who are calling you concerned about? Unfortunately, the process used in bringing forward Bill 40 has created a tremendous amount of uncertainty and polarization, and I guess I'd like to know what their fears are. What are they suggesting the government should do differently?

**Mr Housser:** I guess, because Bill 40 does cover such a wide range, it's the whole gamut, from: "Does that mean I have to become a union member? What if there's a strike in my plant? Can I still go to work? How does that affect me?" to: "Am I a supervisor? Do I have to join the union now?" Just everything.

**Mrs Witmer:** I hear you saying then that you're not only receiving phone calls from the employer community; you're also receiving phone calls of concern from the employee community.

**Mr Housser:** Yes, citizens at large.

**Mrs Witmer:** And you see a tremendous amount of uncertainty and lack of information. What would you suggest then that the government do in regard to Bill 40?

**Mr Housser:** I don't think there's anything wrong with the present labour legislation that's in place now. I certainly wouldn't have any problem working with it, and people haven't up to this point in time. It's not a time in our history that we should be bringing about this change. We should be tackling the economy now, creating more jobs and bringing businesses in. When the money is there, then we can take a look at a wish list.

**Mrs Witmer:** I guess that's one thing that's become very obvious: This legislation is not going to create one new job in this province. In fact, independent studies indicate that there will be job loss and lost investment opportunity.

**Mr Turnbull:** I have to tell you that when you scan the papers tomorrow, if you find your report you'll understand it's because of this capitalist plot to present one side of the picture. I trust the capitalist plot works for you.

I think you've put your finger on the most important issue: People in Ontario, workers, want jobs today. Our party is most concerned that we're jeopardizing the health of the economy of this province and we're driving investment away.

I've personally had long discussions with German industrialists. It's interesting; they have lived with their labour laws for many years and, notwithstanding that, they view the proposed changes to the Ontario labour laws as very dangerous. Are you seeing in your area a drying up of interest in investment by the business sector?

**Mr Housser:** I would hope not, but I think there's a wait and see attitude.

**Mr Ward:** Dan, I'd like to thank you for your presentation. It's well prepared. As usual, when you do something you do it right. A question I have is concerning investment. Dan and I go back a long way. We've fought many political battles together, and now it appears that our political philosophies are a little bit different than they have been in the past.

Brantford has had tough times. I don't think we've actually really recovered from the last recession of 1981-82. If you look at Brantford, we lost our agriculture implement manufacturers, the base of our workforce, in the mid-1980s and have really done a good job, I think, of attempting to diversify. I think that reflects what is going on in the economy, that the workforce and workplace are changing since the 1970s.

Investment-wise, we've had plant closures, and it's been for corporate rationalization, it's been because of the economy and companies simply going into receivership and not being able to afford to pay the bills any more. At the same time, we've also had some good news: Gates Rubber; BASF, that German company that invested \$6 million just recently in a warehouse and the upgrading of its plant on Morton Avenue, and a couple of others. So we've had some good news, but again, a lot of bad, as other communities have.

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When you look into your background, Dan, and you're an independent business person now, wouldn't you agree that if a group of employees made the conscious decision, for whatever reason, and the majority of the employees

supported it, that they felt compelled to have a trade union represent them, the obstacles that we are hearing currently that are in place under the existing act are preventing these employees from having a trade union represent them?

Do you think that because the workplace and workforce have changed so much—and really, the act hasn't been updated all that much since the 1970s—at least these obstacles, in recognizing the business community has concerns about replacement workers and other things, should be looked at and possibly removed or reduced so that the will of the majority of the employees can be taken into account?

**Mr Housser:** Well, it's not as easy as coming in here and getting coffee.

**Mr Ward:** As the other committee's doing.

**Mr Housser:** But I think if the plant or office wants to be organized, I've never had a problem with seeing that completed. It happens within the present legislation.

**Mr Ward:** Well, we're hearing some evidence by presenters, and it's mainly the proponents of the bill, specifically mentioning petitions and how the vast majority of petitions, which delay certification, are really employer-driven and are thrown out by the labour board when the issue is finally discussed and resolved. But it does lead to undue delay in the certification process.

Everywhere else in Canada, in every jurisdiction, petitions are restricted. Speaking perhaps for yourself rather than the chamber, do you think that at least that one item, which is in place everywhere else in Canada, should really be looked at, based on the tremendous evidence that we've heard, the delaying that it causes in certification?

**Mr Housser:** In my past experience with the present act, I've never had a problem with it that way, so I'd say no.

**Mr Hope:** One of the questions that I would like to pose to you is dealing around plant closures. Oh, by the way, I was told to say hi to you from Bob.

**Mr Housser:** Say hi to Bob.

**Mr Hope:** Plant workers are out of a job and the company comes in and closes the door. Do you think there ought to be accountability to those employees who have lost their jobs with no financial recourse whatsoever for getting their money back?

**Mr Housser:** I think there should be accountability to the employees. I think there should be accountability to the community, sure.

**Mr Hope:** Do you think that should be entrenched in legislation?

**Mr Housser:** It would depend on how it's worded.

**The Chair:** Mr Hope, Bob who?

**Mr Hope:** Oh, Bob File.

**The Chair:** Mr Hayes, quickly.

**Mr Hayes:** Good seeing you again, Dan. I'm looking at your responses from your ad campaign and there's quite a number of these that really don't address the changes to the act. What they really say is that "business competition is organized labour and the NDP," "NDP government is

too pro-union," and it goes on and on about the "leftists." "The NDP wants to be able to control industry" and labour and the unions have gone way past their usefulness. Is all of this here from that one little ad that was sent in here—mailed, I believe—"The proposed changes to the Labour Relations Act are bad for small business and will severely hurt the province"?

The chamber of commerce says they want to work together and consult with the government and the government is not doing that, yet what we're getting back from your organization is more about this very bad government and pro-union; more talk about that than we're actually talking about the changes to the Ontario Labour Relations Act. I find that kind of strange.

**Mr Housser:** I don't understand why you would feel that way.

**Mr Hayes:** Well, we're supposed to be discussing the bill and this appears to say those are the enemy, you see, and we're trying to—

**Mr Housser:** Well, no, my presentation doesn't say the enemy.

**Mr Hayes:** It's an attachment to yours.

**Mr Housser:** We want to work together and make this province better and I don't think this legislation at this particular time is doing that. It certainly is galvanizing the business community to put its back up and I don't see where that's going to benefit us as Ontarians in a world market. As you can see, it wasn't 100%, Pat, in our questionnaire—

**Mr Hayes:** No.

**Mr Housser:** —so obviously we have some card-carrying NDP members who are members of our chamber.

**Mr Hayes:** You do have. We have members in our caucus who have been members of the chamber.

**Mr Housser:** Yes, I believe you.

**Mr Offer:** Thank you for your presentation. I think you've talked to me about the perception of this bill, what you feel is the impact of this bill and the way this process has been carried on in your community.

**Mr Housser:** I think it scares people. That's the simplest way I can say it. It just scares people in general. They're scared that investment's going to dry up, that they're going to lose their jobs and that things aren't going to progress in an upward scale as Ontario has and should continue on.

**Mr Offer:** I thank you for the response. I ask the question because there's no—we've been hearing this polarization of interests and I know it's not just the business groups on one side. There is not only concern with what the actual provisions are, but I get the feeling there's a whole group of people out there who aren't going to be coming to this committee who are watching through the television or reading reports. There's going to be a perception that this province is going to be a little different climate for investment after this is passed than before it was introduced. I'd certainly like to get your thoughts on that from the job creators, because that's what you are: You're the job creators of this province.



**Mr Housser:** After we pay our taxes, we don't have too much left to invest in jobs. Maybe we should restructure our taxes in this province. That would certainly help. It's not just investors who are talking about this; it's people on the street, people who come in. I deal on a retail aspect and all our customers—if it's on their minds, they talk about it.

**Mr Offer:** Thank you.

**Mr Phillips:** Just following up on that, the thing people come to me about most are jobs. For most of us, that's what we hear every day. I look at where the quality jobs are going to come from in the future, because we all want the high-value, high-wage jobs in the province. I look at the plant closure statistics all the time because those tend to be the high-paying jobs. Seventy per cent of the people affected by plant closures are unionized. They're the quality jobs. There are many people who have come to us, the employer side of that, saying: "Listen, we're warning you. This is going to hurt investment in the province." The government has said and the member for Brantford often says: "Well, we've got KeepRite," I think it is, "coming into Brantford"—

**Mr Ward:** Gates Rubber.

**Mr Phillips:** —"Gates Rubber coming in, and the opposition is just blowing smoke," that there is no problem or that the problem is greatly exaggerated. I wonder if on those quality, high-paying jobs, you might provide any insight to the committee on what you think might be the longer-term implications of the bill.

**Mr Housser:** I guess, to answer that, that I think it would hurt. It will hurt investment. That's what we're hearing from people.

**The Chair:** Mr Housser, I'm afraid we've got to move on, sir. I want to thank you on behalf of the committee for appearing here on behalf of the Brantford Regional Chamber of Commerce. You've played an important part in this process. The committee is grateful to you and we wish you a safe trip back home.

**Mr Housser:** Thank you.

**The Chair:** Thank you as well for permitting yourself to be rescheduled and accommodating the committee in that regard. We're grateful to you, sir.

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#### AMDAHL CANADA LTD

**The Chair:** The next participant is Amdahl Canada Ltd. Go right ahead.

**Ms Sussannah Kelly:** My name is Sussannah Kelly, and I am director of human resources and government relations for Amdahl Canada Ltd. I am also a steering committee member of the More Jobs Coalition, a coalition, as you know, of approximately 110 businesses that was formed to express our views on what is known as Bill 40.

I have been a vice-president of Lloyds Bank and TransAmerica and an executive of a number of different companies, and senior manager at the Bank of Montreal, Suncor and other major Canadian employers. I was also a senior consultant with Price Waterhouse.

Basically, my 23 years of experience have been around the managing of change involving people, so I have worked in the areas of employee relations and managing change, employee empowerment, and am presently very involved in a lot of work with employment equity. I feel a great part of my life has been dedicated to believing that people are the company.

I am here today on behalf of my company, because Amdahl Canada is committed to the province of Ontario. We're a wholly owned subsidiary of a \$4-billion corporation that markets and services large mainframe computers, data storage systems and application. We're investing in this province for the long term. We just completed a \$1-million expansion last month of our software development centre in Mississauga. In addition, right now—you've probably seen some of our ads—we're hiring 35 very highly skilled, very highly paid individuals, who are Ontario graduates. They are newly created jobs in high-tech industry, and that will bring the total to 135 newly formed jobs over the last two years.

We have spent more than \$70 million in research and development in the province since 1981. This year we plan to spend for the entire year more than \$15 million in research and development in this province. The Financial Post ranked us 31st in all of Canada in terms of research and development spending. Business Week ranked Amdahl corporation in terms of the industry top three in terms of research and development spending per employee. In fact, our spending averaged over \$34,000 per employee.

As a high-tech company, we're very used to change, lots of it, and we're sensitive to the ways we manage it.

We've been in business for about 16 years in this province and we've competed against the biggest and most successful company in the world, and have done it successfully. So we consider ourselves very aware of change, cognizant of it and good managers of change, and we're very concerned about the form and content of Bill 40.

I think the future of Ontario over any competitors will be based on our highly skilled and knowledgeable workforce versus theirs, our taxation system or incentives versus theirs, to attract and keep vital industries; our educational institutions against theirs, and very importantly—for the subject of this session is how harmonious we are and positive we are working together—business, labour and government versus them. If we're filled with strife and divisiveness, we will lose. If we are not, if we work harmoniously, we'll win.

It's very, very simple. I've thought about this. I really get angry with us separating what an employee is. We're all employees. Business leaders are employees and they're not stupid. They're people. If the environment is perceived to be hostile, they have choices today and they can leave to a more receptive environment. If they leave a hostile environment to survive and thrive, unfortunately, they take away our jobs, our investment and opportunities for the future.

I resent any women's group speaking on my behalf about the fact that this legislation perhaps helps in some ways, because I think for women or any target group

today, the secret is choices. It's having opportunities out there, not very restrictive legislation and no opportunities for the future.

I ask this committee a question that I feel very passionately about, and by the way, I'm not really affected directly by this legislation. I'm here because of our customers. We have a policy that a customer problem is our problem, and so many of our customers are part of this coalition. They're very concerned and, indirectly, that affects us in the future. But I ask you, how does this legislation address the need for more jobs in this province right now? It's going to inhibit the kind of investment we've made in the future. We made our decisions based on a cooperative, harmonious environment. My concern is, how does this legislation address the need of Ontario companies like Amdahl to remain competitive, vital and profitable?

We're all beneficiaries. We're all stakeholders—this is government, employees, employers and indeed labour—in this profitability and vitality and survival, the vitality of business success.

When we manage change, we manage a lot of change involved with technology. We involve a lot of change with relationships, people working in a very fast-moving and exciting environment. What we find is that change can be managed most effectively if it's done in a cooperative way. I read the minister's speech and he concurs. If you have all the users involved in the design of legislation or any change, then all benefit.

There is a perception that there hasn't been true involvement, and, Mr Chair, I thank you very much for this opportunity to allow us to try to encourage it, because we encourage cooperation in managing change and we feel it's required now. We have, through the More Jobs Coalition, recommended forums to deal with the actual clauses of this bill.

We also have to get rid of this perception of the government being hostile to business. We have consistently stated that we do not need a rigid labour system out of the 1940s. This is 1940s legislation in the 1990s. To compete, we're all going to need to be innovative and caring and we're going to have to enlist the support of every single employee to improve products and services. We feel this is restrictive and does not encourage that kind of 1990s atmosphere or attitude. It assumes a working environment that just is not going to exist in the future. If you've been involved in any kind of work in Personnel 101, the change has been dramatic.

We've asked to be at the table with More Jobs Coalition. We continue to be at the table. I am endorsing a major report that was prepared by More Jobs Coalition; you should have it now. This was prepared by our coalition and, I understand, two other business coalitions that I'm not involved in, but it's a product of the work of industrial relations practitioners. It's entitled Bill 40 and its Impact on Industrial Relations in Ontario. It's a definitive analysis of why this bill is troublesome to us. I don't have time to go into the specifics here, but it looks at the bill from a practitioner's perspective.

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It concludes, basically, that Ontario is presently seen as a model jurisdiction in terms of sophistication and protection of all employees. It also assumes, "If it isn't broken, in a lot of cases, don't fix it."

There appears to be some concern. We're well respected, and a lot of the business decisions in the past have been made on the existing act. Also, it works well. If you compare it to Quebec, as the previous gentleman mentioned, in terms of strikes, days lost or lower productivity, this certainly has been a successful province. If companies are to be held ransom by strikes, especially those just-in-time manufacturers, they could be paralysed.

Another concern is the redesign of bargaining units. The board has articulated a clear idea of what makes sense. I hope that you are mindful of those tests, and to put bargaining units together inhibits innovation and change at a local level.

We're getting rid of management. We don't have manager levels. With employee empowerment and the whole notion of things, people are working together in teams. This whole notion of hierarchies and conflict is passé. Today people are working with a common goal in mind, creating a very positive and exciting environment, and we see the change. Our success is based on that.

The most repugnant part of this bill, to me, deals with areas regarding the elimination of petitions and first-contract arbitration. It just is so strange to be secretive and surreptitious and set up things where there isn't trust. "If you can't get union membership in an honest or open way, let's attempt to do it surreptitiously," is how I read that bill. It attempts to minimize the opportunities for employees to change their minds and encourages secrecy by not requiring complete disclosure. I mean, we're legal entities. We're respectful, mature people. Do they assume Ontarians can't handle discussion or dialogue or openness or honesty? Isn't it better, we feel, at all times that employees know more rather than less?

It's awfully difficult to come and speak to you about our environment, but I speak with sincerity and with truth in saying that it's a company where most of our success has been based on cooperation, and I believe the same about my province. My Ontario is cooperative. It treats people well, it respects people, it believes in openness and it provides people with an economy that is vital, and choices, which are opportunities. I know all of you share that dream.

I just ask that we respect all people, not just certain constituents here and who are involved in this legislation, and that includes the entrepreneurs, the business leaders; they're employees as well. I say employees, to me, includes all people. It doesn't matter whether you're in a union or non-union environment or you're a manager or not; it's all of us. We're all employees.

I'd like you to make substantial changes to this bill. If you could work with the recommendation that was made by More Jobs Coalition, it would be greatly appreciated, and the interest in speaking here is to create harmony and cooperation that's required for the future. I thank you for the opportunity to express my views.



**The Chair:** Thank you. I want to tell you our thanks for appearing here on very short notice. I hope that wasn't a great inconvenience, and I tell you, it was because of Ms Witmer's urging.

**Ms Kelly:** I appreciate that.

**The Chair:** You can express your gratitude to her at the appropriate time.

**Ms Kelly:** I think all of you probably should be home with your children, so I appreciate that you're here as well.

**The Chair:** It's not always that a politician's work doubles, but once in a while. As a matter of fact, it's really rare, but once in a while. It's five minutes per caucus.

**Mr Hayes:** Ms Kelly, I compliment you on your presentation and also compliment your company, Amdahl Canada Ltd. It appears from your presentation that you really do believe that everybody, our employees and workers—and I think what I'm getting out of your presentation here is that the employees have a fair amount or almost equal input in the decisions that are made for that particular corporation. I think these are some of the things we are saying in this bill that really, truly should happen. I'm pleased to see that.

Of course, you talk about your very high skilled and highly technical workers there and I'm really wondering—because there seems to be a myth that once this bill is passed just about every employee is going to belong to a union and people are going to be forced to belong to a union or a corporation. I think some of the studies you're talking about indicated a very large percentage of workers would not join unions even if they had the choice.

I'd really like to ask you, as you already have a good relationship that other employees and employers don't have, how do you feel this would really affect your corporation? What I'm looking at here and hearing from your presentation is that you're saying employees have lots of input. I don't see why they would even want to join a union and I'm really wondering how this would affect you, if there's not a need for them to join a union.

**Ms Kelly:** Thank you for the questions, Mr Hayes. Do I say "Your Honour"?

**Mr Hayes:** No. Right here, the first name.

**The Chair:** Some might consider "honourable politicians" as being a somewhat oxymoronic concept.

**Mr Hayes:** There's no "mister" or "honourable" here.

**Ms Kelly:** Just to go back to your first point, our employees are involved, that's correct. I am very pleased to give speeches on employee empowerment because we have a system that we feel works, but we also don't feel, nor do they, that they would need a third-party intervention. They feel they can deal directly with all of the decision-makers or the leaders who are involved. A lot of it has to do with the quality process, where anybody has power to make decisions and they feel self-accountable so they start to manage very effectively. It's quite exciting to see.

Your second question, that a lot of companies won't join unions or are not involved—we don't believe it will affect ours directly, but we're already seeing economic

problems with our customers. Our number one corporate value—and it was one of the reasons we competed against the most formidable competitor; I don't want to say its name—is that we said a customer problem is an Amdahl problem. We strongly believe it.

I got involved with this committee—and this is on my time; I'm usually at the office at about 4 o'clock in the morning—simply because I was angry that somebody, our Premier of Ontario, had said that business was not working with this and there was this hostility. I thought: "Come on, this is the 1990s. We've got to work together. This is crazy." So I joined a coalition group that says, "Let's get it to the table and let's try to work this out." What I ask you to do is to please let us get to the table, because there is a perception that we are being ignored. I think that's fair for any group.

**Mr Hayes:** I do believe you are truly sincere. At the same time, I really have to say there are other factors, like some of these billboards that have been up for a long time now, that certainly haven't helped your concern about the dialogue. They've done more to scare off business than this legislation surely would.

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**Ms Kelly:** I have read I believe it was your statements regarding that, and I think we must come back to the table now, though. I really believe that if we make some changes to this, as you have made changes, as this party has made some changes to other proposed legislation, it will be perceived to be trying to work with all Ontarians and get rid of this perception that it is just representing one constituency.

I think right now it's very exciting, because we are poised to be either very successful or we will be in great trouble.

**Mr McGuinty:** Thank you very much for your presentation. It was remarkable how it was so eminently from the heart, spoken with passion, and I think what I heard in particular was that you sounded a note for cooperation and harmony. Sometimes you get caught up in these things and fail to recognize that it's not in the public interest to give either side the advantage.

I want to ask you about this issue of harmony and cooperation and how you think the government is doing to date in terms of the process that we are engaged in. From your perspective, has it resulted in enhanced cooperation in the province between business and labour? Is it neutral or has it had a negative impact? Also, if Bill 40 becomes law, viewed in the light of harmony and cooperation, how do you see that having an impact?

**Ms Kelly:** Thank you for your question, Mr McGuinty. As far as this process is concerned, I greatly appreciate being here now. I believe, from my understanding of this process, that you will indeed look at the document that's been presented or submitted by More Jobs Coalition and you will work with this clause by clause.

As far as the process to date, I have been very discouraged. I have never worked with the government before, and all this has been done on my time; I still have a job to do. But I have visited many of the ministries on my own,

with Dale Kerry and with the team, and I have met with a number of different ministries. I have sent letters to the Premier and tried to work with my local MPs and other parties as well. We have met with other business leaders. Our group is perceived to be less strident than others and I choose that route. I always believe you take the high ground, and we want to try to stay at the table and talk, but we haven't really been included at the table. This is the closest I've got.

I really appreciate it, because I have felt we have been given some lipservice but have not really been involved, so I think some of the hostility everyone feels is frustration. If this indeed becomes law, I really do mourn. I believe that people have choices today. On my block, I have two individuals who were entrepreneurs who created jobs, and they are going bankrupt, selling their homes. They're very frustrated because they feel, like all of us Canadians, that we're overgoverned.

We're all frustrated with all levels today. We're trying very hard to do a job and to stay afloat. I think what we have to do right now is be very careful about more legislation. In fact, we probably should be very careful about having more government. There is good legislation, by the way. I'm a strong supporter of the employment equity legislation and one of the business people that is speaking for it. I think there's good legislation and there's bad legislation, and I think this is bad legislation.

I cannot speak on behalf of my company, but I know they're watching right now very carefully, as all of our employers are. They have choices to stay or to leave this province.

**The Chair:** Thank you. I hope they're watching; they might buy Professor Winter's book, *Common Centres: Media Portrayal of the Gulf War and Other Events*. Ms Witmer, five minutes.

**Mrs Witmer:** Thank you very much for your presentation, Ms Kelly. I think on page 5 you may have identified the key to the problem when you say, "...this is not 1990s legislation. It assumes a working environment which no longer exists."

As we know, for a long time the NDP government has sought to improve the Labour Relations Act, and I think we would all agree that certainly it needs to be reviewed constantly and all the partners need to be brought to the table, problems identified, and then, through consensus, those problems dealt with.

If this is not 1990s legislation, what type of legislation, or what type of mechanism, should this government be using to deal with changes when it sees problems in the area of labour law and labour relations?

**Ms Kelly:** I believe, as I mentioned, that if you get experts and stakeholders involved in the design of the product, you'll always win. I would feel very strongly about getting union representatives or union leaders and industrial relations practitioners involved to try to get rid of a purpose clause that really sets you up for disaster, first of all, and put in something that assumes you're going to work in harmony.

I do believe in company presidents overseeing things and working with the Premier. I think that's very good and we've been supportive of that. But in terms of the drafting of this legislation, I think you have to work with experts and specialists. The group that we have recommended as industrial relations specialists are very highly regarded in the industry—in industry, period. They're a group of people I think could help draft this so that there's more of a positive sense to it.

We're just saying that if it isn't broken, don't fix it. That's our frustration. We have a very good history of labour here, but if we want to look at this, as we should look at everything, in a proper way, I think you need to get practitioners involved. I'm sorry. I'm sounding very verbose.

**Mr Turnbull:** Ms Kelly, thank you very much for an excellent presentation. It's kind of nice to end off the day on a high note.

I'll tell you about the preparatory work I did before I came to these committee meetings. I held an open meeting in my riding of York Mills where everybody was invited. I had representatives of the NDP speaking on behalf of this bill; I had two people there. The public meeting which was attended by over 150 people was a very open forum. At the end of that I very clearly had a direction what the people of York Mills were telling me to do, and that was to oppose this legislation.

But I have to cast my mind back to when I came to live in Ontario in 1969. Ontario was very much a place of opportunity and it was always viewed throughout the world—and I've lived in many countries of the world—as a place which was quite enlightened in terms of its rights and protection of workers, and indeed over the years that has been further refined.

I'm not denying that maybe this isn't the time that we should look at some of the things, but I'm most offended at the fact that the NDP is ignoring such people as yourself who are bringing good common sense and all of the work that you have done of your own volition to this kind of equation.

Our party has consistently recommended a tripartite commission which would exist out of workers, management—and, as you so correctly say, all managers are also workers. We're all workers. MPPs work for the people who elect them. We have to get to be a more cooperative society. We don't set up "them and us."

I would just ask for your comment on the right of people not to join a union. Do you not think that's fundamental to freedom?

**Ms Kelly:** Yes, I do. I have this notion that I finally learned in my mid-40s that if you make people victims, you tell them basically that they are not accountable and that they cannot be responsible for themselves, and we have a lot of victims in our society today. But if you instill self-accountability—and that goes to an employee, to a child, to anybody, to any relationship—and you create self-accountability, then you have empowerment, and that's when change starts to take place. If you put people in



positions where they don't have choices, then that is as dangerous to me as anything that can happen.

**The Chair:** I want to say thank you on behalf of the committee, Ms Kelly. We're grateful to you for appearing here this evening on behalf of Amdahl Canada Ltd. Once again, thank you for coming on short notice. We regret any inconvenience to you, but we appreciate that you were able to accommodate the committee. Thank you kindly. Take care.

**Ms Kelly:** Thank you.

**The Chair:** Thank you, committee members, for your cooperation during the course of the day, and thank you to the staff again for their competence and assistance throughout the course of the day. We are adjourned until tomorrow morning at 10 am.

The committee adjourned at 2033.





**Substitutions / Membres remplaçants:**

- \*Hayes, Pat (Essex-Kent ND) for Mr Klopp
- \*Hope, Randy R. (Chatham-Kent ND) for Mr Dadamo
- \*Phillips, Gerry (Scarborough-Agincourt L) for Mr Conway
- \*Ward, Brad (Brantford ND) for Mr Waters
- \*Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan

\*In attendance / présents

**Also taking part / Autres participants et participantes:**

Marland, Margaret (Mississauga South/-Sud PC)

**Clerk pro tem / Greffier par intérim:** Decker, Todd

**Staff / Personnel:**

Anderson, Anne, research officer, Legislative Research Service

Fenson, Avrum, research officer, Legislative Research Service

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- \*Wood, Len (Cochrane North/-Nord ND)

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## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 2 September 1992

### Standing committee on resources development

Labour Relations and  
Employment Statute Law  
Amendment Act, 1992

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mercredi 2 septembre 1992

### Comité permanent du développement des ressources

Loi de 1992 modifiant des lois  
en ce qui a trait aux relations  
de travail et à l'emploi



Chair: Peter Kormos  
Clerk pro tem: Todd Decker

Président : Peter Kormos  
Greffier par intérim : Todd Decker

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 2 September 1992

The committee met at 1000 in room 151.

### LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

**The Chair (Mr Peter Kormos):** Good morning. It's 10 o'clock. We are ready to resume. It would be, at the very least, courteous of committee members to be here to listen to persons making presentations; at least courteous, if not other things, for instance, displaying an interest in what these people have to say.

### ALLIANCE FOR EMPLOYMENT EQUITY

**The Chair:** The first participant this morning is the Alliance for Employment Equity. Go ahead, people. Tell us your names, your titles, if any, and proceed with your submission.

**Mr David Onyalo:** By way of introduction, my name is David Onyalo and I'm the chair of the Alliance for Employment Equity. Sitting to my right is Mr George Lamony, the vice-chair of the Alliance for Employment Equity, and sitting to my left is Mr Handel Mliilo, the coordinator for the Alliance for Employment Equity.

The Alliance for Employment Equity was formed in 1987 to lobby and advocate for mandatory employment equity legislation in the province. The alliance is a coalition of 65 community and labour organizations representing members of the four designated groups: women, racial minorities, people with disabilities and aboriginal people.

Through public education and debate, forums and workshops, we make representations to governments and organizing campaigns. The alliance is dedicated to the struggle for equity in Ontario's workplaces, and equity in employment is what brings us here today.

We will be sending you a brief later on—we do not have a prepared brief for you today—but what we intend to say to you is already contained in one variation or another in the many briefs you have been collecting up until now.

Our intent is to talk about how those we represent, as an organization fighting for employment equity, will benefit from the proposed changes to the Ontario Labour Relations Act. This legislation also addresses important issues in the workplace, such as the changing nature of the workforce and workplace.

The Alliance for Employment Equity is pleased to make a submission in support of the government's intention of reforming the Ontario Labour Relations Act. We are pleased that this government has recognized that the right to organize must be equally accessible to all workers, particularly members of the designated groups and other lower-paid workers in vulnerable sectors of the economy.

From the point of view of members of the designated groups, persons with a disability, women, racial minorities and aboriginals, easier access to unionized workplaces ensures access to well-paid jobs because of a union's ability of collective bargaining. In addition, when members of these designated groups belong to unionized workplaces, they are accorded the job security that goes with belonging to a body that actually negotiates and then ensures protection of its members.

On the same note, we also support restrictions on replacement workers. The reality of today's workplaces is that they are no longer simply manufacturing industries employing large numbers of people. Legislation which allows workers in these sectors easier unionization and collective bargaining actually improves their terms and conditions of employment.

Due to the fact that most of our members are found in small workplaces and are part-time workers, we also support the idea of consolidating bargaining units that are represented by the same union.

From an employment equity perspective, just accessing workplaces is not adequate. Job conditions such as salaries and security are of equal importance. Think of the disabled person who faces intolerable conditions on the job but is afraid of even talking to someone about organizing a union to do something about the conditions; likewise, the immigrants who have no say about the conditions in their workplace and are actually afraid that organizing to do something about the situation will result in the loss of work.

That's why it's important for us that the changes that are being proposed about certification will make it easier for the members we represent to organize. For us, it's also a question of removing systemic barriers in employment.

What I want to emphasize is that these are not just hypothetical situations. Many individuals from designated groups have stories about being discouraged from organizing because attempts at doing so have led to firings, demotions and all kinds of harassment.

In conclusion today, Bill 40 has also taken a positive step in terms of empowering our membership. In closing, I also want to say that we will be submitting a brief at some point after this and we would be happy to take any questions. Thank you.

**The Chair:** Thank you kindly. Mr Offer.

**Mr Steven Offer (Mississauga North):** Thank you for your presentation. I look forward to receiving the written brief when prepared.

You spoke about the harassment and intimidation in organizing for a union. As we near the end of these five weeks of hearings, it is very clear to me that this bill is not about whether a union is good or bad. It would seem to me that what we want to do is provide a framework in legislation that if employees of a workplace want to form a union, they should be able to form a union free from intimidation and free from coercion, not having a threat of a job sanction over their head, and then leave it up to the workers to be able to make that choice freely one way or the other. Would you agree with that?

**Mr Onyalo:** All I want to say is that I don't think I want to get into the debate of whether belonging to a union is good for our members or not. I have my own position on that. However, the debate around making it easier for members to organize is recognizing the fact that there's an assumption that in the workplace workers and employers have the same power, and it's usually not so.

When you talk about our members or people from the designated groups who want to organize for the first time, who have low-paying jobs and for whom losing a job means losing their livelihood, it's much easier for the employer, who is well organized and who pours in a lot of money in terms of wanting to keep unions out for his own reasons, and that makes it much harder for people from our groups. This is our reality; these are the stories we are hearing.

During the certification process, we recognize the fact that there is a power imbalance, which is something I don't know whether you've recognized. There is a power imbalance and that, for us, is a reality whether you want to acknowledge it or not.

**Mr Offer:** Let me ask you this question. I think we agree. Do you believe that in an organizing campaign there is ever an incident where an employer could express an opinion without its being viewed by the employees as intimidating or coercive?

**Mr Onyalo:** Well, I mean, I'm not going to give you specific examples.

**Mr Offer:** No, I'm not asking for that. In general, in an organizing campaign—this is crucial to the direction of the legislation—is there ever an incident where an employer expressing an opinion during the campaign would not, in your opinion, be viewed as intimidating or coercive by the employees?

**Mr Onyalo:** The employer is entitled to express an opinion but, unfortunately for us, from what you've heard, there are stories of how—it's how you express those opinions, and sometimes there are subtle messages. The Alliance for Employment Equity deals with systemic discrimination and systemic barriers, and some of these things are usually subtle. It's not what employers write down; it's how they go about it. That's our concern.

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I'm not going to say that employers are not allowed to participate in the process at all; it's how they participate

that's our concern. They shouldn't participate in such a way that the people who are trying to organize feel intimidated or feel that they are in danger of losing their jobs. It's how it's done that's the issue for us. How does the employer participate in that process?

From what we've had to date, the way they participate is always in such a way that it makes it harder for our members to organize, especially in the retail sector, in the service sector, because these are sectors, as far as we know, where there is almost a phobia about organizing. A lot of employers are afraid of unions organizing their members, so they go out of their way to stop that process. The question is how they participate in that process. I don't think there's any doubt in my mind that they should somehow participate, but it's how they participate in that process that counts.

**Mr Dalton McGuinty (Ottawa South):** Thank you, gentlemen, for your presentation. I want to touch on another aspect of the bill, or I guess maybe something the bill does not cover. I think we agree that joining a union is one vehicle which will lead to better protection for employees and better working conditions.

However, it's just one vehicle and there remain today and will remain in the indefinite future many workers who will not join unions for whatever reason. What else can we do as legislators? What is this bill not doing to protect workers who will not join unions for whatever reason?

**Mr George Lamony:** I think what the bill is doing is giving workers the option to be able to choose whether they want to unionize or not to unionize.

**Mr McGuinty:** Let me give you an example. Maybe I'm talking in too abstract a manner. Domestic workers, predominantly women working in individual households, will not be given the right under this bill to join a union because the minimum bargaining unit under the law is two people and generally one employer, the household owner, has one domestic. That is an example of where this bill is remiss in terms of providing protection. Then again, that's only if we view unionization as a sole vehicle towards protecting workers. Could you offer us any other suggestions in terms of what we can do to help that kind of person?

**Mr Onyalo:** We were going to be silent on this, but I think we might have to do something very creative. The way to look at it is that whole discussion about combining bargaining units. There might be a way, and this is something you might want to think about further on, whereby you can consider, let's say, domestics working in a certain area belonging to a certain bargaining unit. I'm working on the assumption that these are people who want to be part of a union.

I'm not sure I have the answer for you, but I think this issue about combining bargaining units might be one way of doing it, because in the same way we're saying that in some of the retail sectors we have employees working in a workplace where there are only three or four of them. What we're trying to say is that we must find a way of making sure they belong to a much bigger union. How that's done will be left up to the people who will be working on it, but that's one area you can look into if you want



to address the issue of domestic workers. We don't have an answer for you.

**Mr Lamony:** Actually, there are organized domestic workers at the present moment. Unfortunately, because the legislation still needs to be approved, they have not had the power, if you will, or been empowered to organize themselves to become unionized, but otherwise, they are there. I think the proposed amendments to the OLRA empowers them, gives them the vehicle with which they can mobilize themselves and have a voice.

**Mr McGuinty:** Sometimes I get the very distinct impression that one of the problems here, in terms of regulating what takes place in the workplace, arises from the lack of enforcement of existing laws. The employers are not allowed to intimidate employees when an organizing drive is under way. They're not allowed to threaten them with dismissal. When there's picketing going on, we have laws prohibiting violence on the picket line. We have laws prohibiting harassment and threatening. Do you have any comments with respect to that? Is that not a cry for us to properly enforce the laws that are already in the books?

**Mr Lamony:** I don't know whether I understand what you're getting at. Would you repeat it again, please?

**The Chair:** It was a long question; I understand your response. Go ahead, Ms Witmer.

**Mrs Elizabeth Witmer (Waterloo North):** I'm pleased to see you again. We're going to have a longer conversation today than we did yesterday. All of us are here wearing a different hat today.

I do appreciate your coming forward today on behalf of your group. I now have a better understanding of whom your group represents. My concern about Bill 40 is around the fact that it gives greatly increased power to unions and union leaders, but I am very concerned that at the same time the rights of the individual are being infringed upon.

An example is that although it's easier to unionize under Bill 40—obviously if people choose to unionize they need to be given that option, but people also need to be given the option and the choice to decertify and not belong to a union.

Also, this makes it illegal for an employee to cross a picket line. Sometimes, in the case of a single mother, after a strike has gone on for a very long time, because of financial hardship, it might be necessary for that individual to cross a picket line. Maybe she doesn't agree with the union leadership. Maybe the union leadership has acted irresponsibly. This prevents her from doing so.

Also, in joining a union I feel that all individuals—and you've mentioned how some of the people within your group are taken advantage of—need to be fully informed of what it means to join a union: what the cost involved is, what happens when you go on strike. I'm concerned that the process of Bill 40 does not allow for people to be fully informed on the issue of what it means to belong to a union or what it means not to belong to a union.

How do you think this bill can be improved so that the rights of the individuals are respected and all people fully understand the implications of what it means to be or not to be a union member? I have to tell you, by the way, that I

have a letter here from a woman. She is an immigrant and this is what she says about Bill 40:

"I ask that you look at this increased power through the eyes of union members who feel alienated by the power the union leaders presently exert upon their members with little or no redress within their individual unions."

It doesn't matter whether it's the employer or the union leader; people are feeling, at times, harassed and pressured and really unable to make a choice freely. What can we do to ensure that people truly, independently, can make that choice?

**Mr Lamony:** I think you've raised a rather important point. I'm reminded of politicians today. If people, the electorate, are not satisfied with what politicians are doing, what do they do? You talk of union leadership. Granted, that will happen. There will always be differences of opinion, but you have to understand that union leadership is elected by the workers themselves. Consequently, they speak on behalf of the workers.

By the same token, you can apply that analogy in political situations. We elect politicians to speak on our behalf. In the event that politicians are not serving our needs, we don't kick them out. What do we do? Do we have any forum in which we can redress these concerns we have?

1020

**Mrs Witmer:** But I'm saying to you that people feel intimidated and harassed. Whether it's, as people indicated, the employer or whether it's the union leadership, people are afraid to speak out. This woman is afraid to speak out, and I have to tell you, she's not the only one. How are we going to ensure that, whether they're in a union or not, people really feel they can voice their differences and not be penalized for it? By the way, this woman was penalized for speaking out.

**Mr Lamony:** By the union leaders?

**Mrs Witmer:** By the union leadership.

**Mr Lamony:** I don't disagree that there may be isolated cases, but oftentimes there is the voice of the collective, and that has to be taken into account. As I mentioned, it's just like in a political situation. A majority elects the government, but there's a minority that will always disagree with what the government says.

**Mr David Turnbull (York Mills):** No, the majority disagrees with what this government has said.

**Mr Lamony:** I'm not quite sure of that.

Interjections.

**The Chair:** Go ahead, sir.

**Mr Onyalo:** Mine was just a way of trying to emphasize some of the things my colleague was talking about. The reality of the workplace is that there's always a perception that union leaders are the ones with power. For those of us who work in unionized workplaces, we don't see that as the case. We see the membership as the people with power in the workplaces. And talking about the internal process itself, if the union leadership is not being accountable, is not meeting the members' needs, there's an internal process that takes care of that during election times; even between elections there is a way in which

members, through the general membership meetings, can air their concerns. So it's not a question of union leaders having power. I think that's just a perception. I don't think it's the reality for some of us who work in unionized workplaces.

When you were talking about members being intimidated to not cross the picket line, we have very strong views on that. We think that during the collective bargaining process, the only tool available for unions so far in terms of ensuring that they get better benefits and better wages for the employees is to have the avenue whereby they can go on strike.

There is also the assumption that strikes are something that occur every day in our society. From the information I've got, strikes only occur maybe in about 5% of the times when people are bargaining. It's not as bad as most people usually think it is.

On the issue of whether members should be allowed to cross a picket line, we have very strong views on that. That's why we are very happy with the restriction on replacement workers. We think that's a right move in the right place.

On the issue of educating people about the unions, I don't think this is just a union issue, I think this is a societal issue. If you look at our educational process, when kids go through the education system, not too many people know about unions, and the unions by and large are seen as just representing the best interests of their workers in the workplaces. Unions do play a role in society. If you look at how unions are involved in a whole range of issues in society, it's not just a matter of trying to gouge the employers.

This is not just an issue of unions; I think this is an issue society should start to really think about. If we're going to accept the credibility of unions in our society, the kind of role they're playing, then I think it's up to the government to make sure that process takes place in our society. It's not up to the unions to tell their members, "Union leaders are not really the big power chiefs you think they are." That probably should take place in our society, and we strongly believe in that.

**Mrs Witmer:** As I say, I have no problem with whether or not people choose to belong to a union. I'm sure many of us around this table have belonged to a union at one time or another. I guess I come back to where I started. I am concerned about individual rights and freedoms, and I am concerned that in some respects Bill 40 does limit my right as an individual.

But I'd like to ask you another question related to what you said today. Actually, it's related to—

**The Chair:** We're going to have to move on. If that had been a brief question, we could have done it.

**Mr Len Wood (Cochrane North):** Thank you very much for coming forward and making a presentation on behalf of the Alliance for Employment Equity. Just as a follow-up to what Elizabeth has brought forward from the Conservative Party, if the union executive and the union president are not doing the job they're expected to do, the membership will take the vote and vote them out of office, just as they did in 1985: When they were fed up with the

government at that time, they voted it out of office. In 1990, they did the same thing: They said, "It's time for a change." The same thing happens whether it's chamber of commerce, whether it's unions, whatever it is. If they're not satisfied with the leadership and it's not doing what the membership thinks it should, it's going to be thrown out of office. I'm just wondering if you agree with that concept.

**Mr Onyalo:** We agree.

**Mr Wood:** Very good. After listening to some of the questions that have been brought forward by Mr Offer, what I understand is that he agrees in questioning you that there is no equity as far as the balance of power is concerned between workers and employers. What's your feeling on that?

**Mr Onyalo:** That's what we're trying to put across. We believe there is not equity in the power relationship between the employer and the employees. That's our reality, that there is no balance.

**Mr Wood:** There is no equity in power?

**Mr Onyalo:** It's not quite in balance, yes.

**Mr Wood:** I'm interested in seeing your written brief, that you said you're going to send in to us. But over the last number of years, since 1975, there have been no major changes to the OLRA, and I'm sure you must agree that there have been major changes taking place in the workplace and in the workforce—more women coming in, more minority-group workers out there—that the workplace has drastically changed.

**Mr Onyalo:** Yes. When the OLRA was introduced—I'm not sure exactly, but in the 1930s—there was a manufacturing base. Now the reality is that jobs have shifted into the service sector, into the retail sector, and that is where most of our membership is. So irrespective of how the rest of the committee feels, we think the law needs to be reviewed just so it reflects the reality of our society today.

We are agreeing with your statement that the workplace has changed, especially for us—the issue of more women, more aboriginal people, more racial minorities getting into the workplace—and that is why it's so important for us to have the access to workplaces that are unionized, the access to well-paid workplaces with job security. So I am agreeing.

**The Chair:** Mr Hope wanted a brief question.

**Mr Randy R. Hope (Chatham-Kent):** One of the areas you touched on was education, dealing with understanding the trade union movement and understanding our social programs and how they develop. I was interested that you said we have to create a balance in our education to make people understand clearly what the rights are of the working individual. If I listen to the Tory mentality, we market our labour at competitive prices, which means we'll work for lower wages and not stimulate our economy the way we have been.

I wanted to bounce a view off you that if we were to promote more in our education field about labour—we always expect our people to come out of the school system as little entrepreneurs instead of working people, and the



majority of the people who come out of schools become working people.

**The Chair:** No, that's not a brief question, Mr Hope.

**Mr Hope:** It is very brief.

**The Chair:** I've got to say to you people, thank you very much on behalf of the committee for participating in this process. We are grateful to the members of the Alliance for Employment Equity for their interest in this legislation, and for their readiness and eagerness to provide us with their views. We're grateful to you. Thank you for coming.

1030

#### GRAPHIC COMMUNICATIONS INTERNATIONAL UNION

**The Chair:** The next participant is the Graphic Communications International Union. Would those people please come forward, have a seat, give us their names, their titles, if they wish, and proceed with their submissions. Please try to save the second half of the half-hour for questions and exchanges. Your written submissions will be distributed, will be made an exhibit and will form part of the record.

**Mr James Cowan:** Good morning. My name is Jim Cowan and I'm the international vice-president for Canada of the graphic communications union. With me is Duncan Brown, the Canadian organizing coordinator of our union.

The graphic communications union represents 14,000 workers in Ontario producing newspapers, packaging, catalogues, books, magazines and a wide array of commercial printing.

Before you is our brief for your perusal and consideration. Because of the time restraints we would like to focus on two parts of the brief: organizing and the anti-scab provision. First, I would like to ask Duncan to review our position on organizing and then I would like to make some comments on our position on section 32, the anti-scab section of the legislation.

**Mr Duncan Brown:** I'll just touch briefly on some of the items as they affect organizing, but I'll start first with the purpose clause.

We agree with the purpose clause being included in the legislation to assist in its interpretation. However, one of the things we'd like to see the government of Ontario do—and this is not part of the legislative package—is undertake a promotional campaign to promote the purposes of the labour relations legislation, as it does with other social policy objectives like health and safety in the workplace, human rights legislation, pay equity and, I anticipate, with the employment equity legislation. We'd like to see them promote actively in the media the purposes of the labour legislation.

Before I touch on some of the substantive provisions, one of the problems that we do have at the board, and I heard it come up earlier this morning, is just with delay of the board—just plain and simple delay of the board. That might be an issue of resources to the board as well. I'll give you just two brief examples of things that have happened in the past year or so to our union.

One of them was a small plant of 12 people. When we applied for certification, the employer showed up without legal counsel. The board chairman asked him if he'd like legal counsel. He said no, and halfway through the day he decided he wanted it. He showed up at the subsequent hearing a month and a half later without legal counsel; another adjournment. He showed up subsequently with legal counsel who wasn't prepared to proceed. At that point in the bargaining unit of eight people—low wage, high turnover. We had lost eight people, not union supporters, but eight of the people in that bargaining unit were no longer working at that employer either because they had left or they'd been pressured out. At that point you're before the board on a certificate, and then you've got to try and get a collective agreement. Just delay.

Another one was another company with about 100 employees where we went on an automatic certification. We ended up agreeing to a vote on an agreed-upon list. Immediately after the vote the employer objected to the list it had agreed to before the board, and then about six months later into the litigation on that, all of a sudden a no-pay allegation came up. In cross-examination the card signer said that he didn't sign the card, so we had to litigate whether we could bring in handwriting analysis experts into the board. Then when we finished that and we got a handwriting analysis expert, the person recanted that he had signed the card. It took us 18 months subsequent to a vote to get a certification; 18 months of litigation before the board.

That's just a couple of sort of extreme examples where there are problems at the board.

In terms of the substantive provisions of the act, the firing of the organizer clause in the act is totally inadequate, in our union's opinion—absolutely inadequate. Our position is that at the very least what should be able to happen is the board should be required to hold a hearing within 24 hours on an allegation being filed at the board and make an interim order for relief, except in possible cases where there's something like a prima facie case of maybe theft or whatever—you know, extenuating circumstances.

The fired organizer has to be put back in the plant immediately. This is especially critical in small workplaces. The system that is being devised here by the Ministry of Labour is just not adequate enough. There's too much room for further delay. It can be done. All you have to do is look at the practice of the board in illegal strikes. It's done, and it's done quickly. All we're asking for is the same treatment for a fired organizer.

Support required for certification: The retention of the 55% and not taking it down to a simple majority, just in principle, we find offensive. We find it insulting to trade union organizers and we find it insulting to working people. We believe the threshold for automatic certification should be taken down to a simple majority.

I'm skipping over some things here because they're relatively straightforward, and I'm sure you've heard a lot of it before.

Appropriateness of the bargaining unit: We would like to have seen an amendment in the legislation where the

board would be directed to consider the need to facilitate access to collective bargaining when it's considering the appropriateness of the bargaining unit.

This has practical consequences: sometimes a strict adherence to the traditional bargaining-unit structures the board has, which we don't object to, but some cases they're not appropriate and they might impede access to collective bargaining. We'd like to see something in the legislation which would direct the board to consider that issue of access to collective bargaining and unionization. The government had proposed it in its discussion paper and then withdrew from that position.

With respect to part-time and full-time employees and the related issue of consolidating existing bargaining units, we like the move in that direction; however, we think that should be at the option of the trade union, particularly in the case of consolidation of existing bargaining units.

We have in our union a history of craft unionism. We're now an industrial union, but we do have a lot of existing craft bargaining units.

I'll give you an example of a newspaper we recently organized. We had about a 60-year history where, in the press room, there were 40 people who were unionized; a long bargaining history. To organize the rest of the plant was about 200-and-some people, of whom about 80 were part-time and casual unskilled labourers in the mail room of the newspaper.

If the employer has the option of applying for consolidation of that bargaining unit, he can immediately put those groups together and dilute the bargaining strength. The bargaining relationship and the whole bargaining history of the existing unit is thrown into question. We don't want the employers to be able to do that, plain and simple, and we don't think that should be an option for them.

First-agreement arbitration: We think it's a step in the right direction. I think the 30-day strike- or lockout-triggering mechanism is unnecessary and in fact could have adverse consequences. I've been organizing across Canada and in Tennessee and Mississippi over the last six years, and I'll tell you, when people say here that there's fear and uncertainty in the workplace during the organizing process and during the first-contract scenario, they're not kidding.

The bargaining relationship is extremely fragile. You have two groups of people who are not used to dealing with each other in this way. You have an asymmetrical power relationship and you might have some acrimony that comes from the organizing process itself; maybe just the fact that it happened. Then that can be compounded by a prolonged and acrimonious litigation process before the board. So the parties are not used to dealing with each other, and to try to put them into a strike or lockout situation I don't think is appropriate in order to get them access to first-contract arbitration.

In terms of organizing, there are a lot of problems. I think the legislation is designed to address them, and in many ways it does, but I think there are a few loopholes that need to be closed and seriously looked at.

Having said that, I'll pass it back to Jim.

**Mr Cowan:** First, I'd just like to clarify something that was said earlier in these hearings. On August 6, I

believe, Russell Mills, the president of Southam Newspaper Group, said on page 6 of his report:

"Southam has undergone a strike under the Quebec legislation prohibiting replacement workers which has been a model for Bill 40. Our experience is that the level of confrontation and the degree of antagonism has never been worse.

"The Gazette in Montreal was struck for seven months, from July 1987 to early in 1988. Because the Gazette believed that contact with customers could not be broken, extensive planning and very costly preparations were undertaken to permit production and distribution."

While the last part of it is true, the first part of it is not. It was a lockout; it wasn't a strike. What the Gazette did in Montreal, prior to the 90-day provision, was hire replacement workers, send them to the United States to be trained and when they locked the employees out, they had ready-made pressmen. That's why there was violence.

1040

Interjections.

**The Chair:** Go ahead.

**Mr Cowan:** I'm not accustomed to this, so bear with me, will you? With regard to the anti-scab provision, I would like to review a lockout we now have in our union that I believe not only shows the need for anti-scab legislation but demonstrates how existing legislation does in fact allow legalized union-busting.

On May 22, 1991, we had 35 bookbinders locked out at a company in Scarborough, which is still going on 15 months later. At the time of the lockout there were two major classifications in the contract, journey 1 and journey 2. The journey 1 classification is predominantly male and the journey 2 classification is predominantly female. The final company proposal before the lockout was a wage freeze for all journey 1, all men, and a \$3.65-per-hour wage cut for all journey 2, all women, plus an extension of hours from 35 hours a week to 40 hours a week, 12-hour shifts and seven-day coverage. At that time, the last proposal from the union had been an extension of the existing contract, and because of that a number of the men crossed the picket line because it made very little difference to them. They were getting exactly what the union had proposed. Only because of charges filed by the union with the labour relations board and the Human Rights Commission did the company, three weeks later, change its offer, this time to a two-year wage freeze for everyone while continuing to insist on all its other give-backs.

In January 1992, after the strike had been on for approximately eight months the company asked for further meetings, we believe on the advice of its attorney. At that meeting the company tabled another proposal that called for all the employees to take a further 10% cut in wages and to pay for their own benefits and pensions. To this day their position has not substantially changed.

We believe that under the present legislation this dispute will never be settled because, given the present economic conditions and the legislation, there's no reason for the employer to settle and only in the new proposed



legislation is there any hope of forcing this employer or any other employer to bargain fairly.

In closing, I'd like to add that I'm not talking here about a radical group of employees. I would guess that the average age of the people on this picket line is the late 40s and early 50s, with lengthy service in the company. In fact, at least two of the people on the line have now retired, one with over 40 years' service with the company.

That's my presentation.

**The Chair:** Thank you kindly. Five minutes per caucus.

**Mr Turnbull:** Let me, first of all, start by further clarifying what you said at the beginning. You want the government to undertake an advertising promotion of the purpose of this bill.

**Mr Brown:** Purposes of the Labour Relations Act.

**Mr Turnbull:** Okay. We have within the purpose clause a clear bias for unions, and I'm reading from it. It says, "to encourage the process of collective bargaining so as to enhance the ability...to negotiate..." to improve "terms and conditions of employment."

What is happening here is that the traditional role of government in legislation is tilting the balance. Instead of being neutral, it is saying they have to advocate for the unions and you're saying that taxpayers' money should be spent to promote this. Is that what you're saying: Taxpayers' money should be used to promote this?

**Mr Brown:** In the earlier presentation, prior to us coming up here, the gentleman spoke about misinformation, about the role of trade unions in our society. Trade unions have played a very important role in collective bargaining and a very important role—probably, in my view, the most important role—in terms of democratizing the workplace, improving the working conditions of Ontario workers and improving the standard of living of Ontarians—and not just the material standard of living; as well, the general standard of living in terms of social policy, changes in our society.

**Mr Turnbull:** You haven't answered my question.

**Mr Brown:** I'm getting to that, sir. I believe the purpose of the legislation is to promote trade unions as a policy objective in the Labour Relations Act. If it is to promote trade unions and collective bargaining to achieve those objectives, then the government should also let the public know that. I'm not talking about advertising trade unions; I'm talking about the promotion of the collective bargaining.

**Mr Turnbull:** So taxpayers' money should be used—

**The Chair:** One moment. Once again, and I've said this half a dozen times, I could care less whether two people talk at the same time, but there are people who work hard translating this and there are people who work hard transcribing this, whose job is made all that much more difficult when people talk at the same time. Go ahead, sir.

**Mr Turnbull:** Very good. I'm asking a specific question. Are you saying taxpayers' money should be spent to promote unionization?

**Mr Brown:** I said taxpayers' money should be used to promote and educate the public on the benefits of collective bargaining.

**Mr Turnbull:** That's a subjective judgement. Surely it should be neutral.

There was a gentleman who sat in here throughout these hearings yesterday evening. He's been refused the ability to speak. He works for Ontario Hydro. He's among a group of employees who do not want to belong to a union and they're being forced into a union situation. The union is allowed to use the internal mail in Ontario Hydro to promote unionization, and yet this employee, who is among a group of several hundred people who are so incensed with the proposition, is being told that no, they're not allowed to use the internal mail to distribute their side of the picture. Is that the kind of thing you think is fair in our society?

**Mr Brown:** Just a point of clarification: Is the union using the internal mail of Ontario Hydro in organizing a non-organized bargaining unit?

**Mr Turnbull:** Apparently in organizing some who are not currently in a union.

**Mr Brown:** A group of people who are already non-union? No, of course not. In fact, that's one of the things we've said in many of our things: In organizing, it's usually the opposite case, where a union is standing in subzero weather outside a plant trying to get the workers going in, to pass out information and what have you—then you run into the problems of industrial parks and shopping malls and office towers and what have you—and the employer is having captive audience meetings in the plant and distributing information in pay cheques and what have you, and the labour movement has proposed—

**Mr Turnbull:** The employer has paid for the premises, you understand.

**Mr Brown:** I'm talking. If you're saying the union is using the internal mail system and a group of non-union workers is not, no, it's not fair. In fact, it is the exact opposite of the situation that happened during the Eaton's organizing campaign.

**Mr Turnbull:** Okay. Would you then think it would be fair that this committee should try to hear this gentleman, who urgently wants to be heard by this committee, if there is a cancellation this week?

**Mr Hope:** Well, let's get the other party in here too.

**Mr Brown:** That's none of my business, quite frankly.

**Mr Turnbull:** Okay. My next question—

**The Chair:** Mr Hayes.

**Mr Pat Hayes (Essex-Kent):** You must get the impression that the previous speaker is anti-labour.

**Mr Turnbull:** I'm not anti-labour; I'm anti-labour union, the union leadership.

**Mr Hayes:** That's clear enough.

**The Chair:** Go ahead, Mr Hayes. You have the floor, not Mr Turnbull. He's had six minutes already.

**Mr Hayes:** You say in your brief that there are many delays and lengthy litigations which occur as a result of

organizing drives and first-contract negotiations. What I'd like to ask you—and I'll try to lump all these little questions together—is, how much does it cost your union, for example, if you can give us an example, for litigation or disputes over petitions? Also, what impact do these disputes, these lengthy delays, really have on the workers themselves and the employers? They certainly appear not to be really worthwhile, in a sense, because of the dollars and the frustrations that are on both sides of the litigations.

**Mr Brown:** I couldn't give you a dollar figure on the cost of litigation. It's obviously very expensive, and in Ontario it's extremely expensive because you don't appear before the Ontario Labour Relations Board without legal counsel. We can do so quite confidently in other jurisdictions, but in Ontario you can't do that, so you have that.

In terms of the effect on the people in the plant, the delay is a very big thing. People are extremely uncertain. We try to keep them informed. We just had an organizing campaign where about every four days we were putting information, a letter, into the plant just briefly describing what was going on. People just want to know what's going on. It's like, "Let's get a decision on this."

1050

In terms of the relationship, I think it's destructive. Most employers, if not all of them, find the fact that their employees are unionizing extremely offensive. It's an affront to their person, they think. They're just against it, and sometimes just on that basis alone. What happens is then they go to a lawyer and the lawyer says, "Well, this is how we take you up to the edge of the law," and they go through all the standard, form stuff that they do. In fact, when we organize, one of the things we do is we have a 36-page booklet which explains what the union is and all that information, how collective bargaining works, and one of the sections explains what to expect from the employer. It's pretty easy to put it down because it happens all the time.

Then they go through that process. They end up going through this litigation. What happens is that all of a sudden you have what started as a split getting wider and wider and wider, and then you end up at the bargaining table at the end of that process. So you're starting off in a very bad position. The litigation compounds that; there's no question about it.

I think the other thing it does is there's this impression out there that people join trade unions because they're going to get big bucks or something like that all of a sudden overnight, but people join trade unions based on issues of dignity and respect in the workplace. They've just had it because of their ill treatment. What happens during that litigation process—I actually am amazed that employers don't put two and two together—is that when they start doing this anti-union stuff and when they start playing around with the technicalities at the board and prolonging litigation, they actually turn their employees further against them. Their employees become hardened in their position, and then people who were maybe sitting on the fence all of a sudden decide what side of the fence they're on. It's counterproductive for employers, actually. But, you know, you can't tell them.

**Mr Bob Huget (Sarnia):** Thank you for your presentation. I think, just for the record, the so-called individual that Mr Turnbull refers to—his presentation has been submitted to the committee and in fact is part of the record of the committee's hearings, so I think that is a bit of a red herring on his part.

The second thing I would like to refer to is in terms of Mr Turnbull's questioning around the dissemination of information about the Ontario Labour Relations Act. We had a presentation yesterday from a chamber of commerce. They raised the concern that some of their members, and indeed their small business members, did not have adequate information about the act and were not receiving adequate information about the act.

I think there's a tremendous need in this province to do exactly that, to communicate about the Labour Relations Act and other acts in ways that the people of this province can understand, in ways that don't require a lawyer to guide you through word by word. I think that's a positive exercise, and I don't see that as promoting unionism or government or anything else. It's just common sense to do that, and if we spent enough time and effort, we might even get through to people like Mr Turnbull. It may take quite some time and a lot of money, but we may even get that far down the road, where Mr Turnbull will understand the Labour Relations Act.

**The Chair:** Go ahead, Mr Brown. You can respond to that.

**Mr Brown:** Was it the chamber of commerce from Brantford or Guelph or whatever?

**Mr Huget:** Guelph, I believe; I'm not sure.

**Mr Brown:** Yes, I saw that, and he mentioned, "Yes, we're even getting calls from workers," and stuff like that. There's no wonder, because in our industry there's incredible misinformation going on by the employers.

The Canadian Printing Industries Association has had a misinformation campaign, whether through inadvertence or by design; I'm not one to speculate on that. But for example, they started quoting from these so-called objective studies about job loss in the province. Any careful reading of these studies—and I have taken the time to read several of them—would indicate that they are not that objective, and they're distributing this information. They're also distributing misinformation about what's contained in the legislation. They are, through the employers, trying to tell their employees and our members, "This is what's in this legislation," and some of it is absolute nonsense.

The unfortunate part is that not only are they confusing individual Ontarians, but I'm afraid that this hysterical misinformation campaign is going to drive investment out of the province, the exact thing that they profess to not want to do. But again, how do you tell them?

**Mr Huget:** I couldn't agree with you more, sir.

**Mr Gerry Phillips (Scarborough-Agincourt):** I appreciate the presentation. Just by way of background, I have some familiarity. My father was a lithographer for 40 or 50 years—50 years, I guess—in a unionized shop and I've been on the picket line with him, so I understand it.



Let me tell you how I think things will unfold, and then you tell me whether you agree or whether you have a different interpretation. I understand why the unions support the bill. If I were in your shoes I'd support it wholeheartedly, because it's a fairly significant shift. I think every single provision in here is for the unions, and I think that's fine. I understand that. I don't agree with it, but I understand it, so I understand why you're supporting it.

The challenge in your industry, though, is that, as I understand it, an awful lot of jobs have disappeared in the printing-packaging industry. As you look ahead at where the jobs are going to locate, they're fairly flexible now, because of technology and those sorts of things, so they can go to another province or they can go to a state or indeed, I gather, way offshore, Hong Kong and what not. So those jobs are fairly flexible. Entrepreneurs who are looking at getting into the business, I understand, are looking at where they're going to locate.

It is challenging enough to do business right now in any jurisdiction. We see record numbers of plant closures and layoffs. The unemployment rate right now is like double what it was two years ago, so there is a huge problem in employment. I think in particular in your industry it's huge.

If it's a challenge today and the labour legislation comes in—which indeed provides more power to the employees; I don't think any objective person would argue that isn't the case—my concern is that in all our businesses, and particularly in your business, we will not see the job creation in Ontario that we're going to need.

It may be your membership increases, because I'm sure the union penetration will increase, but in terms of jobs for the young people in the future of the province, I think an objective analysis would say, "This is going to result in fewer jobs, located elsewhere." That's my view of it. As I say, particularly for the people who want to work in your industry, I think you're going to be particularly hard hit, not just because of this, but this will be another kind of reason why people will look to put their capital elsewhere.

As I say, I can understand completely why you would cheer it on. I understand why the government's moving on it. But in terms of the best interests of the people of the province, I don't happen to think that's the case. I think we're going to see, slowly but surely, a lot fewer jobs created and jobs go elsewhere. I think even in your industry, an awful lot of your employers have now acquired companies in the US and are looking at balancing their workloads.

Am I wrong there? Tell me why I'm wrong, and tell me why, in terms of the future of the province, this is going to create more jobs rather than fewer jobs.

**Mr Brown:** We have experienced job losses in our industry. In terms of union to non-union, it's about two to one non-union jobs are being lost to union jobs. Quite frankly, my opinion of that is that the unionized shops are more productive. They have higher-skilled and more stable workforces and they're more productive workforces.

Having said that, we've also lost shops where they've been productive and profitable shops because of rationali-

zation of production due to the Canada-US free trade agreement.

The printing industry is unique; 80% of the printing industry's establishments are approximately 20 people. Those are not the types of shops that relocate in Taiwan.

The Canadian printing industry historically has been Canadian-owned. We're now getting increased foreign investment, including from America, and I think these reforms are needed just because of that, because what we're seeing at the bargaining table are these very foreign ideas of collective bargaining brought in. Many of the big labour disputes we've had over the last few years have been where American employers have come in, taken over the plant and then insisted on concession bargaining and attempted to bust the union.

How do I see that this would create job loss or job creation? I've seen the studies that have been done on job loss. Of the ones I've taken the time to read, and I haven't read them all, I think most of them are hardly objective. I think that if I were one of the people behind them I would be embarrassed by them—not necessarily embarrassed by the study, embarrassed by the way they're being used. They're essentially—

Interjection.

**Mr Brown:** I think you can't do a study of that.

**The Chair:** I want to say thank you to the Graphic Communications International Union. We appreciate your participation in this process. We're grateful to you for providing us with your views and we trust that you'll keep in touch and continue to communicate.

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#### CONSUMERS' GAS; UNION GAS; CENTRA GAS

**The Chair:** The next participant is Consumers' Gas, Union Gas and Centra Gas. Would they please come forward, have a seat, tell us their names and titles and proceed with their comments.

**Mr Ron Munkley:** Good morning. My name is Ron Munkley. I'm the senior vice-president of operations at Consumers' Gas Co. Joining me is John Bergsma, the senior vice-president of regions for Union Gas. We want to thank you for the opportunity to appear before the standing committee on resources development to present the views of Consumers' Gas, Centra Gas and Union Gas on Bill 40. Unfortunately, an officer from Centra Gas couldn't be with us this morning. They were tied up in a special executive meeting, but they did ask me to let you know that they are completely supportive of this presentation.

Together our companies provide natural gas service to 98% of Ontario's natural gas customers. We're here today to tell the members of the committee that we share many of the common concerns that have been raised by the business community during the course of the Labour Relations Act debate. However, providing natural gas services is a business with unique demands and obligations to the public. As essential service companies, the impact of the amendments will be more onerous for us than for other Ontario businesses. We will outline why the amendments are

inappropriate for us and we will propose a solution to that problem.

Very briefly, before we discuss the impact of the legislation on ourselves, we think it's important as responsible business representatives that we draw your attention to the perception we believe has been created by Bill 40, a perception that was dealt with a little bit by the previous presenters.

In the July 20 issue of *Forbes* magazine, and specifically in that publication's review of the international 500 largest companies, the section on Canadian companies states: "Ontario, the most populous of the 10 provinces, has an anti-business, socialist government. This may have prompted Varsity Corp, once a symbol of Canadian manufacturing, to move its headquarters to Buffalo last year."

In our view, regardless of the accuracy of the depiction of the Ontario government or of *Forbes*'s speculation on why Varsity Corp moved to Buffalo, hundreds of thousands of *Forbes* readers, potential investors in the Ontario economy and creators of jobs, were left with a negative perception of the province. We believe that one cannot overestimate the importance of recognizing perceptions as a fundamental basis for business decision-making, and the *Forbes* article is symptomatic of perceptions now generally held outside of Ontario and Canada.

Clearly, there's no agreement between the government, business and organized labour as to the effects that Bill 40 will have on business operations, collective bargaining or the economy. But if the government and the trade unions truly believe that the business community does not understand the true impact of the legislation and is therefore overreacting to it, it would seem imperative that they move to correct those perceptions before proceeding.

If these are indeed misunderstandings and misperceptions and if they are left uncorrected, business executives will proceed to make investment decisions based on them and the Ontario economy will be severely damaged. At a time of high unemployment, that's unacceptable to all of us.

In our view, the Premier's Labour-Management Advisory Committee would seem to be an ideal forum to address these kinds of perceptions, as it brings to the table senior representatives of business, labour and the government.

Turning to our specific concerns, in February of this year, Centra Gas, Consumers' Gas and Union Gas presented a joint submission to the Ministry of Labour in response to the minister's discussion paper entitled Proposed Reform of the Ontario Labour Relations Act. As well, input was provided to the government by the Ontario Natural Gas Association, of which each of our companies is a key member.

Representatives of the three utilities also made individual presentations to Ministry of Labour officials during the course of the consultative process and in a number of individual meetings with MPPs across Ontario.

In our presentations, we outlined the utilities' concerns with respect to the content of two key provisions of the discussion paper relating to strike replacements and to crossing picket lines.

Giving credit where credit's due, we recognize that the government has prudently decided to drop the "hot cargo" proposal, which would have allowed employees to refuse to cross picket lines in unrelated disputes. We are, however, extremely discouraged by the government's determination to restrict the ability of the employer to carry on business during a work stoppage. For all practical purposes, Bill 40 would make it illegal to replace workers who have gone on strike, regardless of individual circumstances.

Section 73.1 of Bill 40 represents a shift of power that has far-reaching implications for the entire provincial economy and is a substantial change to the practice of collective bargaining in Ontario. More particularly, it will have a significant impact on the ability of our companies to provide a safe, reliable and economical service to consumers in Ontario.

The natural gas industry plays a major role in Ontario's energy sector and in the provincial economy. The gas utilities help Ontario and Canada compete on a global scale by providing a secure supply of low-cost energy to the province's businesses and industries. Because of its economic and environmental advantages, natural gas is the fuel of choice for many enterprises, institutions, industries and key tourist attractions across Ontario. These businesses are what Ontario has depended on to maintain its high standard of living and the level of prosperity we have all worked so hard to achieve.

Industries such as pulp and paper, mining, petroleum refining and the manufacture of steel, cement, fertilizers and chemicals rely either directly or indirectly on natural gas. They create thousands of jobs, providing wages and benefits to individuals, stimulating local economies, and they contribute to the local tax base. These customers expect that the gas utilities, with their reputation of providing dependable, high-quality service, will always be available when they call.

In addition, many of our customers are what we term essential service customers. These are gas users whose dependence on natural gas is so fundamental that assurance of supply is always a top priority and for whom any unscheduled interruptions in service cannot be tolerated. They include all residential customers, small commercial customers using natural gas for space heating, water heating and cooking and those who provide especially essential services, such as hospitals and schools, and who do not have the ability to switch to alternative fuels for prolonged periods of time.

We are authorized under the Ontario Energy Board Act to provide natural gas services in designated areas of the province. Pursuant to the authorizing legislation, we have the obligation to provide our market areas with a safe, adequate supply and reliable delivery of natural gas. In our view, it is not in the public interest for one statutory purpose to be frustrated by another.

Business investment and reinvestment decisions are made for a number of reasons. The available workforce, the regulatory framework and the quality of the infrastructure are all significant. The services provided by our companies fall into the final category. We are a very important part of Ontario's energy infrastructure.



Any business making an investment decision must be concerned to ensure that its energy source is reliable and cost-competitive. However, restrictions in Bill 40 will seriously compromise our ability to reassure business on either issue.

Continuing repair and maintenance are required in order to ensure the integrity of the natural gas delivery system in Ontario. There are thousands of miles of pipeline and thousands of sophisticated equipment installations which require constant attention.

The natural gas delivery system is maintained, upgraded and expanded on a continuing basis to meet the existing and anticipated future demands of our customers. The gas utilities deploy a field staff with ongoing responsibility for monitoring the integrity of the system. Maintenance of the system also involves emergency services to repair pipeline damage which potentially could threaten public safety and convenience.

Despite preventive maintenance, breaches in the system do occur in the course of construction by others, road-building and the activities of customers altering their premises. The time and extent of damage to the system is completely unpredictable. We require many resources and skilled employees to be available at all times to respond to emergency calls, whatever their magnitude. The reliability of natural gas as an energy source is compromised without this capability.

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In addition to these upstream-of-the-gas-meter tasks, which include pipeline locates, pipeline construction and pipeline damage control, there are many downstream-of-the-meter tasks which utilities perform on a consistent and ongoing basis as well. In particular, the gas utilities conduct approximately two million service calls each year, mainly for the two-million-odd residential gas customers in the province. It would be imprudent and potentially dangerous if any restrictions were placed on our ability to complete this work.

On almost all service calls we do safety checks, and we should not be editing customer requests for service based on a customer description of an apparent problem. Any equipment failure could have safety implications and should be investigated by qualified and licensed service persons. There are many public safety and company liability ramifications of not doing so.

Our greatest concern then is the impact of the strike replacement provision on public safety. Our companies are involved in distributing a volatile substance which can be dangerous if not handled properly. Safe handling can only be ensured if a qualified workforce is available to perform required maintenance and to respond to emergency calls. This is labour-intensive work. For example, when a break in a line occurs as a result of damage by outside contractors, it may well be necessary to visit several thousand homes and businesses to ensure that gas is shut off, and to return to those same premises once the repair has been performed to "light up" the system for each individual customer. If we are unable to respond quickly, safety and service are immediately at risk.

Work stoppages affecting our three companies have been infrequent and of short duration. The record does not warrant operational restrictions which would threaten the delivery of natural gas services during a strike situation. Furthermore, Bill 40 would conflict with the gas utilities' statutory obligation under the Ontario Energy Board Act to maintain uninterrupted service.

During the few strikes which have occurred, the gas utilities have maintained service largely by deploying qualified supervisors from across our respective organizations to attend to all service requirements and emergencies. It is important to emphasize that the gas utilities have acted responsibly. It has not been our practice to hire non-affiliated strike replacements. We have not taken advantage of present flexibility to undermine or challenge the position of the trade union as the lawful bargaining representative of our employees.

Our purpose has been to protect public safety and the public interest, while at the same time to achieve an early settlement of the collective agreement. Bill 40 would, however, undermine the ability of the gas utilities to react in a strike situation. Restrictions would prevent the reassignment of front-line supervisors and management personnel from one location to another. Without the ability to freely utilize supervisors and managers during a work stoppage, we can have no assurance of maintaining the safety or reliability of the gas system.

We have carefully reviewed the language of the bill. We remain convinced that this major change in the province's collective bargaining legislation is unnecessary and potentially dangerous to public safety. We believe it is responsible and prudent to preserve the right for gas utilities to deploy a supervisory workforce to maintain those services which are critical to the public wellbeing during a period when our unionized employees have withdrawn their services.

Accordingly, we submit the following revisions to Bill 40. The revised statutory language is appended to our presentation.

First, we recommend that a time frame be established within which the vote which triggers the strike replacement restriction be taken. The existing language could result in a vote early in negotiations, months before a strike deadline. Our suggestion would require the trade union to conduct the vote after the minister has released a no-board report and when the latest offer is before the employees.

Second, we recommend that sections 73.1 and 73.2 be amended so as to permit the use of supervisory resources during a work stoppage in the circumstances described.

Third, we recommend that the transmission and distribution of natural gas be included among the services listed in subsection 73.2(2).

Fourth, we recommend that subsections 73.2(7), 73.2(8), 73.2(9) and 73.2(10) be deleted. Here, we believe fundamentally that our companies should not be placed in the untenable position of having to ask for the trade union's permission to utilize the services of our own supervisory employees. Clearly, this would place the uninterrupted provision of natural gas services to our customers at significant risk.

Together these changes would recognize the existing practices in our industry. Specifically, our companies would be able to deploy supervisors during a work stoppage. We believe this is a reasonable solution for the gas utilities. It is critically important to ensure that none of our services are hindered or interrupted. The ability to resort to supervisors allows management the immediate flexibility necessary to sustain essential functions during the dispute.

We urge the government to consider this refinement of the strike replacement language. We are firmly persuaded that our ability to maintain a safe, reliable and cost-efficient service requires the right to deploy supervisory and management personnel in strike situations.

Thank you very much, and of course we'd be pleased to answer any questions that you have of us.

**The Chair:** Thank you. Five minutes per caucus. Mr Hope, please.

**Mr Hope:** Thank you for the presentation. It's good to see that you have it in depth dealing with the section of the emergency clause and replacement worker aspect of things.

Good day, John. How are you doing? I didn't hear you speaking. I would like to focus on Union Gas, which is one of the corporations in my riding and which I'm very proud to work with. On a number of occasions we've had the opportunity. Yes, we have philosophical viewpoints that are quite different, but I think all in all we work very well together.

When I was reading this presentation and hearing the potentials of strikes and that, that doesn't reflect the Union Gas workplace that I know of, both the union and non-union workplace, because how many millions of dollars did you spend on the technology that was in cooperation with the union to develop an education centre, and no government funding, I must add, was provided in this building?

I know of the cooperation of the union, the joint programs with the workers who are there and then the staff who are inside that workplace, and I see the presentation that's made today and I'm starting to ask myself the question—you know, you talk about emergency situations. Most of the people who work for you have natural gas being provided to their homes. I'm saying, would they harm themselves as individuals or their neighbours? The corporate citizen I know of, Union Gas, has always been there to help people.

I'm going to be interested in the appendix that you've put forward in your proposals. But, John, I thought for sure I would see Union Gas and the union making a joint presentation on the role models of Ontario workforces. John, I just ask you your viewpoints on this.

**Mr John Bergsma:** Thank you, Randy. I have to go back to see where I can start on this.

Thank you for the kind words about Union Gas. We really do believe that we have a very positive working relationship with the Energy and Chemical Workers Union and that those relationships have been strong for a long time. I can't even recall now the last time there was a work

stoppage. I think it goes back into the 1970s, but it's certainly well before my time with the company.

I think in that context yes, there have been positive working relationships and I think we have every expectation that those positive working relationships will continue. They have obviously been there in the context of legislation as it stands today. Our concern, as expressed in the presentation that we've made here that Ron has shared with you, is that in emergency circumstances and in responding to calls during a work stoppage there may be times where it is important to get people there quickly and sometimes in large numbers. We run into situations where we are finding that we've got to move people from one place and another. It has to be done in a very timely way. It's not something that you can spend time in discussion about. I mean, you've got to get there now.

One case that I'm just reminded of was a few years ago, and you may have been aware of it at the time, where a contractor broke into one of our lines doing some road work, into our one line going into the town of Amherstburg. I think in that case we lost 3,000 customers, and to get that customer line break fixed and then get those customers back on the system, first, you have to go in and shut down all these customers, make sure all their appliances are shut off and then once the repair has been made, you've got to go back and light them up. That takes hundreds of people.

We had to bring people in from other areas of our company. We brought people in from London and we brought people in from Hamilton and we brought people in from Waterloo. In fact, there were convoys of blue trucks going down Highway 401 from east to west. It happened to be at the very same time that John Crosbie walked out of the free trade negotiations. You remember that way back when? The word was that Canada actually was invading the United States and they'd seconded Union Gas to lead the invasion.

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**The Chair:** Mr Hope, you can ask another question, or Mr Huget can. The choice is yours.

**Mr Hope:** I'll let Mr Huget.

**Mr Munkley:** Mr Chairman, would I be able to add to that response a little bit?

**The Chair:** Sure.

**Mr Munkley:** Consumers' Gas works with the same union, the Energy and Chemical Workers Union. We also have excellent relations with them. We have very few strikes. They're of short duration. We have very few grievances. We work together on constructive issues in the workplace.

What we wanted to impart in the text we handed out was that we really don't want to put the union or ourselves in the untenable situation, just before or during a strike, of trying to negotiate what the public safety is. I have no concerns at all in saying that they have the same commitment to public safety as us, but it's not something that is on the table for negotiations and it's not something that should get complicated by labour relations.

**Mr McGuinity:** Thank you, gentlemen, for your presentation. How many people are using natural gas? How many customers are there in the province roughly?



**Mr Munkley:** It's over two million, about two million residences.

**Mr Bergsma:** When you take into account the number of people living in a residence, you can probably multiply that close to a factor of four. So there are a large number of users.

**Mr McGuinty:** There are many, many people relying on natural gas. I'm going to be so presumptuous for a moment as to speak on behalf of those customers. As a customer, I don't want to have to rely on goodwill or a good working relationship between an employer and the union to get me my gas. I don't want to have to see you folks work things out in the context of some kind of a dispute where emotions are high.

I think it would be irresponsible of my government not to put in legislation that's going to ensure that I continue to get my gas. If I smell a leak, I want somebody in. If some kind of pilot light goes out, I want somebody in now. I don't want you folks down there dicking over whether you're going to come to see me or whether it's appropriate. That's how I feel and I think that's how most of your customers are going to feel about this kind of thing.

I don't think there's any question whatsoever. You folks should be exempted from this. I don't want to rely on your working things out. I don't want to rely on goodwill. I want somebody at my door if there's a problem. There you have it.

**Mr Munkley:** I'm not sure how to respond to that question.

**Mr Hope:** You don't know Union Gas. That's another problem.

**Mr Munkley:** We agree with you. That's the substance of our presentation.

**Mr Bergsma:** Just to address that very point, I think we have also made some specific proposals in terms of some changes that might be made to deal with exactly that issue. We've not only made the general point, I think we've tried to recommend specific wording that could be considered to address that issue.

**Mr Offer:** If I might carry on with that, I listened to Mr Hope's question about some philosophical difference. I think the people of this province would fall off their chairs thinking there's some philosophical difference in whether their pilot light is going to be turned on or off as they need it.

I hear from your presentation that this piece of legislation will provide a barrier to your servicing individuals in their homes whose pilot light might go off, because you always say it should be turned on by the gas company. I'd like you to give me some sense as to these two million service calls. I imagine that many of them are, firstly, unanticipated and, second, for the home.

If I may, if I can get this matter in, we've heard Quebec ballyhooed as a province that has this type of legislation. There will be the provision of gas in that area. Can you share with us if there is any difference in the way in which these types of service calls are dealt with in Quebec and in Ontario?

**Mr Munkley:** Yes, I can. There are a couple of aspects to the question. One of them is the reference to pilot

lights going out. A service call can be initiated for many reasons. It might have been a pilot going out, it might have been electronic, it might have been some problem with the supply. Any of them could have safety implications. So any of the service calls that come to us from an unknowing public could have safety implications, and we feel we have to respond to them all. It's that clarification on the point that I wanted to make.

With respect to Quebec, yes, we have heard that analogy made. In fact Quebec has been thrown up as a model in many circumstances. The only circumstance I should speak to knowingly is with respect to the gas industry, and it simply is not analogous. There are about 100,000 residential customers in Quebec; there are about 2,000,000 in Ontario. The industry and the regulations around the industry have grown up differently there.

In particular, it is not the first inclination generally of Quebec residential customers to call the gas utility for service; there's a contractor infrastructure that they tend to call. To look at the designated workforce provisions of the Quebec legislation doesn't really help us here because it is just not an analogy. You can't compare the two; they're different quantum.

**Mrs Witmer:** Thank you very much for your presentation. It's obvious that if any restrictions are placed on your ability to complete your work, it could be potentially dangerous to people in this province.

I think you've presented some excellent amendments here to Bill 40. If they are accepted and you can deploy supervisors and managers as well as utilize contracts, what incentive would there be for you to settle a strike?

**Mr Bergsma:** We don't think in a strike situation there are really winners and losers. I think we're all losers if we have a work stoppage of that nature. We'd like to see our employees at work, not on the picket lines, and that's why we would want to settle as quickly as possible.

In the meantime, we would have to very substantially change and modify our business operations for the duration of a strike. In our case, we've got over 700 unionized employees who are providing these services. They're fully engaged every day of the week. So during a strike period, there's a lot of work we would need to be doing that is not going to be able to be done. All the non-critical things get placed on hold, and in the long term we don't think that's an acceptable course of action. That's something our customers are not going to be very happy with.

We think there are the normal commercial incentives, if you will, to resolve strikes early, and we think in our industry the relationships have been of such a quality that under existing legislation we've been able to do that. Indeed, the relationships have been such that there have been very few work stoppages in the first instance.

**Mr Munkley:** I might add that our employees are essential partners here in our relationships with our customers. In fact often they are the interface, and it's simply not in our best interests to have the employees out on strike and to have the difficulty of a strike before us and them. It's hard to work your way out of it afterwards, even after it is settled.

**Mrs Witmer:** I hope the government does give very serious consideration to your amendments. I have one other question. As you probably know, a few weeks ago this committee heard from the representatives of the Energy and Chemical Workers Union, and I believe that they represent the workers at Consumers' Gas.

The impression was created that indeed the union and the management did work very harmoniously and well together, and there was the indication on the part of the union that it was prepared to cooperate with management to provide emergency services to customers during a work stoppage. Certainly there have been other unions in here that have indicated that.

If that is indeed the case, then what is the problem with Bill 40 and its ban on the use of replacement workers, if you could get that commitment?

**Mr Munkley:** I can only repeat what I said earlier, that almost all service calls have the potential of a safety problem, and that means that we would be in what I'd characterize as the untenable situation of trying to negotiate with our union what is public safety. It's just not acceptable. That's not on the table. Our responsibilities as public stewards are not negotiable. We don't want to put them in that position or us in that position. We have to be able to respond to all the incoming calls.

**The Chair:** I want to say thank you to Consumers' Gas, Union Gas and Centra Gas for their participation in this process, for their comments today and their willingness to share their views with us. We are grateful to you. The 11:30 participant telephoned earlier to indicate that they would not be here. We're recessed until 1:30. Thank you.

The committee recessed at 1130.



## AFTERNOON SITTING

The committee resumed at 1332.

## ONTARIO FEDERATION OF AGRICULTURE

**The Vice-Chair (Mr Bob Huget):** We'll resume hearings on Bill 40.

The first group scheduled this afternoon is the Ontario Federation of Agriculture. If you could identify yourselves and then proceed with your presentation, you're allocated one half-hour, and certainly if you could leave some of that half-hour for dialogue, I think all members of the committee would appreciate that.

**Mr J. Grant Smith:** Thank you, Mr Chairman. I'll be presenting the brief. On my right is Ken Forth, representing the Ontario Fruit and Vegetable Growers Association, and on my left is Cecil Bradley, the research person with OFA.

We will try to do as you suggest, Mr Chairman. I'd like to read part of our brief—it won't take long—and then the balance of the time will be left for questions from the committee members.

First of all I want to say how much we appreciate the opportunity to meet before the committee to express our views on agriculture and the labour aspect of agriculture. As I said, the brief that we have will be partly read and part of it won't be.

An introduction: Ontario farm organizations are grateful for the opportunity to present their views on Bill 40 to the Legislature's standing committee on resources development. Bill 40 signals a fundamental change for workplace relations on Ontario farms. The farmers' perspective on this change needs to be entered into the record. Legislators need the opportunity to discuss the change with representatives of those who are affected. That is why we are here today.

Labour issues are important to farmers. Through farm businesses, hired farm labour makes an important contribution to the Ontario economy. Farmers paid \$653 million in wages and salaries in 1990. That was the industry's second-largest expense item and represented 15% of the sector's total cash expense. For farmers in horticultural crop production, labour costs can range up to 75% of the total production expenses.

The current discussion of labour issues is not an ideological debate for most farmers. It is felt to be a matter of survival. Market pressures are intense; market prospects are uncertain. Anything adding to those pressures or creating more uncertainty is a threat, and I would like to suggest that we look upon the new NAFTA agreement that's been entered into for North America, some sectors, as a real threat.

Discussion of Ontario Labour Relations Act reform within the agricultural industry has involved a representative group of farm organizations. Early in 1991 the OFA offered to coordinate Ontario farm organizations' contributions to labour policy discussions. The agricultural associations' labour issues coordinating committee—I'll refer to that as the LICC—was formed in March last year.

The LICC was charged with identifying issues requiring comment, assembling background information and developing a common position that can be presented to government. Those organizations active in the LICC are listed in attachment 1, and you have that. The network of interested organizations is listed in attachment 2, and you have that.

The next section I'm going to leave for your perusal, because that's the government's position. I'll move on past it to the response to the proposal.

The reaction of farmers to the ministry proposal was strongly antagonistic for at least two reasons. The first reason had its roots in farmers' acute sense of economic vulnerability. Farmers assumed that if farm workers had the right to organize, they would. Further, they assumed that once certified, unionized farm workers would make unrealistic demands at the bargaining table and strike to enforce those demands. In a worst-case scenario, farmers saw their livelihood being jeopardized when caught between the demands of workers and the inevitabilities of Mother Nature. This year's a good example of what kind of weather we farmers have had to put up with. I'm a dairy farmer, and we're running at least two to three weeks behind in our crops. So Mother Nature dictates, as most of you know, I'm sure.

Second, farmers react in a negative way to being split, and I think you understand that. They resented the apparent divide-and-conquer strategy. Maybe that wasn't the case, but that is what it appeared to be. They did not like anyone drawing a line through their ranks, applying one set of rules on one side and another set of rules on the other. One farm leader said, "A farm is a farm is a farm," meaning that no arbitrary distinction between farm operations was acceptable. For labour relations purposes, farmers did not see any value in distinguishing between agricultural operations on the basis of product produced, number of employees, level of technology, gross sales, structure of ownership or marketing methods.

I'll skip the next two paragraphs and move on.

In summary, the committee rejected the MOL definition based on proposals regarding the OLRA and the agricultural industry. The committee noted that the province of Ontario had always recognized the unique nature of farming, and varied the applicability of labour legislation in order to achieve an appropriate balance between farmer and farm worker rights and responsibilities. Consistent with that accepted approach and in response to the third question raised in the discussion paper, the committee proposed the development of a separate act that would provide a legislative framework for labour relations in the agricultural industry.

The minister accepted the committee's proposal, and in January 1992 established the Task Force on Agricultural Labour Relations, with a broad mandate to advise the government on an appropriate course of action.

I'll skip the next paragraph and move into the following.

The task force unanimously recommended, among other things, the extension of organizing rights to farm

workers within the framework of a separate agricultural labour relations act. For quick reference, the complete recommendations of the task force are included with this brief as attachment 3. See attachment 4 for a discussion of the issues that farmers feel need to be addressed in a separate act.

Then, on August 27, the Minister of Labour announced that the government had accepted all the recommendations of the task force, and asked a task force to advise the government on the specifics of an agricultural labour relations act by early this fall.

The work of the task force has already begun. We believe the working relationship established in the first task force effort has paid dividends. We are optimistic that consensus can be achieved on many of the issues before the current task force.

Amending provisions of Bill 40: In contrast to the reception given the task force report, the farm community does not welcome Bill 40. If adopted, the relevant amendments would transfer the prerogative of applying the OLRA to agriculture from the Legislature to the minister acting by regulation. These amendments are not acceptable to us. Farmers object to the Bill 40 approach for two reasons.

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First, it circumvents the authority and discretion of the Ontario Legislature on a fundamental matter of labour market policy. Application of a labour relations regime to an entire sector of the economy is not an administrative matter to be left to the best judgement of the minister of the day, in our opinion. Generally, the Legislature, not the Lieutenant Governor in Council, should decide to whom statutory protections and responsibilities apply.

Second, the amending provisions of Bill 40 signal a lack of faith in the ability of the task force to develop a workable labour relations regime for the farm workplace. This apparent mistrust undermines the process and compromises its ability to achieve consensus.

We respectfully ask that the standing committee on resources development unanimously recommend to the Ontario Legislature that: (1) amending provisions of Bill 40 regarding agriculture be deleted at the third reading, and (2) the Minister of Labour be asked to bring forward an agricultural labour relations act consistent with the advice of the task force.

Thank you, Mr Chairman. We'd be pleased to try to answer questions you might have for us.

**Mr Offer:** Thank you for your presentation. It is, I think—I stand to be corrected—the first presentation that deals head-on with the issue of agriculture we have heard in this bill and I just want to be clear in my mind. The Ontario Federation of Agriculture support the task force report which calls for the introduction, after some consultation, of an agricultural labour relations act.

**Mr Smith:** Yes.

**Mr Offer:** I'm not talking about the particulars that might be contained within the act, but you support a separate piece of legislation.

**Mr Smith:** Yes. We requested that.

**Mr Offer:** Okay. My next question is one that I share with you. Under Bill 40, notwithstanding the good work that has been done by agriculture, the Labour Relations Act could possibly apply to the agricultural sector by regulation. In other words, it could be by the stroke of a pen, basically, by the ministry, and I hear from your presentation that you would want this bill to be changed to take out the word "regulation."

**Mr Smith:** Do you want to answer that, Cecil? Did we see this?

**Mr Cecil Bradley:** Mr Offer, I don't have the text of Bill 40 before me so I'm not sure whether the removal of merely that word "regulation" would be sufficient for our purpose. I think the point of the recommendation is that the entire amending provisions, which would shift to the minister or Lieutenant Governor in Council the prerogative for the application of the Labour Relations Act to the agricultural sector—it's any and all words associated with that shift that we would like to see deleted.

**Mr Offer:** What I want to do, with your indulgence, is be absolutely clear that basically right now there is an exemption to agriculture. You would like the status quo to remain until a new act is introduced. You do not want any changes to labour relations in the agricultural field to take place by way of regulation.

**Mr Smith:** That is correct.

**Mr Offer:** Okay. That's great. Now, I have one further question and it is not to the delegation, Mr Chair; it is to the parliamentary assistant or to the staff of the ministry.

It is my understanding that of the recommendations of the task force, of which there are six, I believe, the Minister of Labour has already committed to five—unless you can help me out.

**Mr Bradley:** I don't mean to answer on behalf of somebody who is better informed, but I believe that as of a media release out of the Ministry of Labour dated August 27, the government has now accepted all six recommendations of the task force.

**Mr Offer:** Okay, thank you. Those are my questions.

**Mr McGuinty:** Thank you for your presentation, gentlemen. I wonder if you might enlighten an ignorant city boy. I've heard several times that the farm community has special concerns when it comes to the organization of unions. I'm just wondering if you might briefly highlight those for me so I can gain a better understanding of the special concerns.

**Mr Smith:** I'll make a couple comments; then I'm going to ask Ken to make comments.

**Mr McGuinty:** Sure.

**Mr Smith:** I want you to understand that in agriculture everything's either alive or perishable. If we don't harvest our crop today, tomorrow it's no longer a possibility. Those are the key things in agriculture that we're concerned about. For example, I'm a dairy farmer. You milk cows tonight; you don't leave them until tomorrow morning. You feed animals; you don't let them go. It's things that are beyond our control. That's one of our concerns. Ken might want to make a comment.



**Mr Ken Forth:** We have a few things different in the fruit and vegetable industry. The fruit and vegetable industry is basically a price-taker, not a price-setter. They take whatever the market will pay, highly influenced by Mexico and California and the Great Lakes states when they're in season with us. Now, the labour rates in the United States are substantially lower than they are in Canada. They're substantially lower in California and the wages are a fraction in Mexico of what we pay in Canada. Those are some of the concerns we have with the free trade agreement. With Mexico now, we have more concerns.

Most of the products in Ontario are oversupplied right now and they have been for the last 10 years. Horticulture was the bright light in the 1970s, when everybody started to move to horticulture. Now there are a lot more people in horticulture and the margin of profit is almost non-existent any more.

One of the main concerns some of us have on our farms, though, is that a lot of the labour supplied on our farms is supplied by the farmer and his family. Obviously, they're not going to be included in the union. Does that mean the farmer now has to walk around with his hands in his pockets and just tell people what to do? Will he be allowed to do those special jobs?

On our farm we have a harvester for broccoli. There are only five of them in Canada. Probably 10 people in the whole country know how to run them; the rest of them are in California. Does that mean I won't be allowed to operate that machine any more? That's the problem we have. Will we have to have a union person run that machine? Those are a lot of the problems we have.

Right now the profit margin is zero or just a little bit. Any further increase in cost to us that would make us vulnerable will put us to death. All you have to do is read the newspaper lately to see what's going on in the Niagara Peninsula right now in the peach industry. The peach industry is in a terrible situation.

**Mr McGuinty:** I gather that if you were made subject to Bill 40 by way of regulation, the anti-replacement-worker provisions would wreak havoc, essentially, on a farming operation.

**Mr Forth:** It would be over very quickly. The window of opportunity for some crops, and milk and dairy cows too, is a few hours. If those two hours of opportunity are missed—let's just say there was a strike and no replacement workers were available. If we went on a strike for three days in a peach orchard, those guys would have to wait for 365 days to come back to work again, because there wouldn't be any work, because that's where the opportunity would lie. So you're quite right that it would wreak havoc with the whole industry.

**The Vice-Chair:** In the absence of the third party members, I'll move to Mr Hayes.

**Mr Hayes:** It's unfortunate the Conservative members are not here to deal with this important sector in our society. However, on a more pleasant note, I would like to compliment—

**Mr Offer:** Mr Chair, I think, and I'm speaking as one who is present, that it's highly improper and out of order

that any member would ever comment on the absence or lack thereof of any member of this committee. I would ask that you would school your member in what has been parliamentary procedure in this place for many years. I find it highly improper and incredibly disrespectful.

**Mr Hayes:** Mr Chair, I just said it's unfortunate, and I think it really is, that they're not here, and they should be.

1350

**The Vice-Chair:** Can we proceed with Bill 40?

**Mr Hayes:** I'd like to compliment the task force on the hard work it has done, and just to quote a few people, first of all, the Honourable Elmer Buchanan. He recognizes—and I do, as his parliamentary assistant, and so does this government—that the separate legislation does reflect the unique characteristics of agriculture in this province.

I think it's very important for others to realize that farming, having tomatoes or whatever and stopping that product from getting to the processors, is a little different than stopping an assembly line for an automobile, where they can work overtime to catch up. I think we all realize that.

I think the committee has done a very good job and I'm very pleased that the Ontario Federation of Agriculture and Roger George, your president, have welcomed this announcement by the Minister of Labour that agricultural issues will be separated from Bill 40. As a matter of fact, Roger is quoted as saying, "This is exactly what we're looking for." Of course, he's repeating what Elmer has said, that agriculture is a unique industry and needs unique labour legislation.

I want to compliment the task force and Roger George for working together with the government, unlike some others who have chosen just to fight and take the government on rather than stick to dealing with the specific issues in the labour relations amendments.

We have been criticized because of the process and there are people who say there was a lack of consultation. I know you had some struggles at the beginning. Do you feel the consultation process has worked and will work? It is continuing right now, until you bring a report back on September 30.

**Mr Smith:** Yes, Pat, that sort of process has worked. We've talked with the minister and the deputy minister at different times, and I have to say that they're most receptive of our ideas. I made a suggestion to the deputy minister at one time, when they were talking about changing legislation or when we asked for legislation and there was some negative criticism about it. I said I thought Ontario always gave leadership in this country and I didn't see any reason why we couldn't give some leadership and have our own agricultural act. That philosophy seemed to be accepted and the minister now has announced we're going to have our own act. We're already working on what that act should contain. We'll be making that presentation.

Again, we're still concerned about Bill 40 and what needs to be done with that, and I'm hoping that can take place. That's still our request at the bottom part of my presentation. We just can't have it by regulation, because as somebody suggested, a stroke of the pen and it's over

with. Agriculture can't live with that. We have to have something we can depend upon.

**Mr Hayes:** I'm looking forward to some more input from you and from the group. Hopefully, we can come up with the right type of legislation that will address the concerns of farmers in this province.

**Mr Wood:** Thank you very much for your excellent presentation. Even though I'm a northerner now and I'm the parliamentary assistant to Natural Resources, I was born and raised on a farm in southern Ontario and I fully understand some of the concerns you've raised. I'm pleased that the Minister of Agriculture and Food, along with his parliamentary assistant and the group there, have listened. We had a good dialogue going there where these things can be resolved. I just want to thank you for the good presentation you brought forward. We do understand the concerns of the agriculture industry.

**Mr Hope:** Just to echo some of the comments that have been made, because Barry Fraser comes from my riding and is one of the people who were on the task force, I just wondered, from your viewpoint, being as the agricultural groups all come together along with the unions, do you think this is going to lead to the government's overall goal of cooperation and working harmony between trade unions and agriculture as a long-term goal?

We've been criticized by the business community, about other areas, that we've not worked with it and I was just wondering, from your perspective, being involved in the task force and now moving to another step of the task force, do you feel that's going to have the ultimate goal of success for both workers and for the organization itself?

**Mr Smith:** I would say that as long as we continue to talk and keep working together, the objective can be reached. I'd just like to leave that philosophy with you.

**The Vice-Chair:** I'd like to thank the Ontario Federation of Agriculture for appearing here this afternoon and each of you for presenting its views and generating, I think, some interesting dialogue with members of the committee.

Mr Offer, you have a point.

**Mr Offer:** Yes. I thank you for your presentation.

Before the next delegation arrives, maybe I could get some help from the parliamentary assistant or Ministry of Labour staff. I've received a news release of September 1 where, "The Labour minister, Bob Mackenzie, has today announced the establishment of labour-management services and the appointment of Vic Pathe as deputy minister of the service." I would like to get a clarification as to whether this announcement is for the establishment of a service that is in fact the service that's contained within Bill 40. In essence, has the minister established a service which is not yet passed under this legislation? Secondly, if that's not the case, then why have we now got two services under the same minister, in the same ministry, doing the same thing? I'd like that clarification.

**The Vice-Chair:** Thank you, Mr Offer. The ministry people are here and when appropriate they will provide a response to your inquiry.

The next group is the Ontario Public Service Employees Union.

**Interjection:** Mr Upshaw's on his way. I don't know if I can ask the committee's indulgence for a few minutes. My understanding was that he would have been here by now.

**The Vice-Chair:** We can give him a couple of minutes, but we are on a fairly tight schedule.

**Ms Sharon Murdock (Sudbury):** Mr Chair, in the interim, actually we do have somebody from the Ministry of Labour here who could answer.

**The Vice-Chair:** Is the Confederation of Canadian Unions here?

**Mr John Lang:** Yes.

**The Vice-Chair:** Then let's move with your presentation, sir, and we'll wait for OPSEU.

**Mr Brad Ward (Brantford):** That's very wise, Mr Chairman.

**The Vice-Chair:** He appears to be at the presentation table and anxious to get on with it, so I think we might have his agreement.

1400

#### CONFEDERATION OF CANADIAN UNIONS

**The Vice-Chair:** Thank you, sir, for attending today, and thank you very much for moving yourself up about half an hour in the time frame. The committee really appreciates that. If you can identify yourself and then proceed with your presentation, you're allocated one half-hour. If you could leave some of that half-hour for dialogue among the committee members and questions and answers, I know they would all appreciate it.

**Mr Lang:** My name is John Lang. I'm the secretary-treasurer of the Confederation of Canadian Unions. We're a labour central that represents 25,000 workers across Canada. About 8,000 of those are working in mining and the service sector and the quasi-public sector and in communications and transportation in Ontario. Our membership constitutes a representative cross-section of the workers in the province, and of course we're very interested in Bill 40.

Members of the committee, I hope this is the last time I present a brief on this NDP government's proposals to amend labour legislation in Ontario. The Confederation of Canadian Unions made a presentation to Labour Minister Bob Mackenzie in May 1991, responding to Partnership and Participation in the 1990s, the report produced by the labour representatives to the labour law reform committee he had established. We also presented a brief in February of this year as part of the consultative process following the release of the discussion paper prepared by the Ministry of Labour. Now we are responding to Bill 40. Need I point out that in each instance the scope and the substance of the reforms being proposed have been significantly reduced? If the government keeps proceeding in this direction, there will soon be nothing left worth writing home about.



I do not intend to repeat all the recommendations and observations that the CCU has made in its previous presentations. Some of our proposals have found their way into Bill 40; others have been rejected. I want to focus my remarks today on some key issues that are facing this committee and the government in its effort to develop labour legislation that meets workplace conditions in the 1990s.

Anti-scab legislation: We might as well begin with what the fuss is all about. The CCU supports the inclusion of sections 73.1 and 73.2, which will curtail the use of replacement workers during strikes and lockouts. We support these reforms because we are certain that the elimination of scabs in labour disputes will lead to more mature, responsible labour relations in the province.

If anyone on this committee still needs to be convinced of the need for such legislation, one need only look at the situation currently unfolding in Yellowknife among our members in the Canadian Association of Smelter and Allied Workers, Local 4. I've included, attached to the brief, a copy of a newspaper piece that outlines that struggle.

There are 240 miners who have been locked out for over three months by Royal Oak Mines; scabs being flown in by helicopter; RCMP in full riot gear with guard dogs and tear gas, more reminiscent of South Africa than Canada; injunctions; arrests, and a community so deeply divided that the scars will remain for decades after this dispute is settled. Why? Because Peggy Witte, the new owner of the mine, figures she can make a name for herself by importing US-style union-busting into the Canadian mining industry. But she is learning that workers in Yellowknife, as in other cities and towns across Canada, will fight to the bitter end to prevent someone from stealing their jobs.

The question this committee should be debating is not why we are getting this legislation in Ontario but rather why it has taken so long.

While supporting the initiative of the Ontario government in this regard, the Confederation of Canadian Unions wants to reiterate its warning that the government risks undermining its intentions by allowing employers to move the work of striking employees to another location. This provision will invite employers to stockpile in offsite warehouses and to move their machinery and equipment to new locations where they can continue to operate during a strike. The Confederation of Canadian Unions strongly urges this committee to bite the bullet on this issue and to recommend that employers not be allowed to move the work of striking employees to another location.

Organizing activity: The Confederation of Canadian Unions is hopeful that the amendments contained in Bill 40 will enable more workers in the province to belong to unions and to participate in workplace decision-making through the collective bargaining process. The inclusion of section 92.2, which will allow unions to request expedited hearings on unfair labour practices complaints during organizing drives, should deter one of the common practices of anti-union employers. We hope this new provision will be given a broad interpretation by the labour relations board.

We are disappointed that the government has not acted on providing some means for unions to obtain the names, addresses and phone numbers of prospective members and to have access to an employer's premises during an organizing campaign in a manner that would not disrupt workplace procedures. We feel these provisions would help to recognize the legitimate role unions play in our society by enabling workers to exercise important rights they have under the law.

We support the elimination of the terminal date in applications for certification, and with it the elimination of petitions withdrawing union support that are filed after the date of application. Along with the elimination of the \$1 sign-up fee, this provision promises to remove some of the major delays that are now common in the certification process.

The government's move to a 55% sign-up requirement for automatic certification from its previously recommended 50% indicates to us that it believes unions must meet a higher test to demonstrate support of their members than other institutions in our society. The same thinking lies behind the decision to require a 60% vote favouring strike action before anti-scab provisions could come into force. The CCU would have less objection to these provisions if the Ontario Legislature also passed a law requiring a political party to have the support of 55% or 60% of the electorate before it could form a government.

Contract tendering: The CCU has fought hard for the protection of workers in the contract service sector. Bill 40, with its insertion of section 64.2 into the Labour Relations Act, is addressing a long-standing injustice that should benefit some of the lowest-paid and most vulnerable workers in the province. We support these amendments.

Grievance arbitration: The Confederation of Canadian Unions is in favour of a much more extensive overhaul of the grievance arbitration system than the government has proposed in Bill 40. We believe the basic tradeoff which underlies the arbitration system is an unfair deal for labour. This tradeoff, as expressed in section 44.1 of the current act, prescribes that an arbitration process is the sole means of resolving a dispute that arises during the life of a collective agreement. We believe the party should have the right to choose whether to go to arbitration or to invoke the strike-lockout provisions when the dispute arises.

Labour agreed to this tradeoff back in the 1940s on the understanding that arbitration would be a quick, inexpensive and fair means of settling disputes. In our opinion, the arbitration system in Ontario currently meets none of these criteria. Rather it is characterized by lengthy delays, exorbitant costs, an overly legalistic approach to dispute resolution and decisions which increasingly support the employers' perspective.

The CCU believes that the state should take responsibility for the entire cost of the arbitrator and the hearing process. If two businessmen have a disagreement over a contract they have signed, they are not expected to hire a judge or rent a courtroom for the hearing. These costs are borne by the state. Why should it be any different for labour relations? We believe that if the state were to assume these

responsibilities, it would have a more compelling interest in establishing a quality system of mediation, staffed by experienced industrial relations officers who could assist the parties in reaching a settlement.

To ensure that the arbitration system operates on the basis of the equality of the parties, the Labour Relations Act must guarantee that grievors are treated with justice and dignity. It is not fair that workers must abide by the "work now, grieve later" ruling but employers can discipline workers immediately for a perceived infraction of the collective agreement. The law must provide that discipline is imposed only after it has been found by an arbitrator to be justified.

Although the proposed reforms in Bill 40 do not come close to meeting the changes we believe are needed in the arbitration system, we do feel that imposing a deadline within which arbitrators must issue a decision and providing arbitrators with the authority to require the production of documents prior to a hearing will address some of the more obvious weaknesses of the current system.

Work organization and partnership development service: The Confederation of Canadian Unions has long argued that employers must come to an agreement with the union representing their employees before implementing major layoffs or shutdowns or before implementing technological changes in the workplace. The inclusion of sections 41.1 and 44.1 and the corresponding changes to the Employment Standards Act will provide some opportunity for unions to have input on these vital issues.

#### 1410

We hasten to point out, however, that negotiations that arise under the proposed section 41.1 will take place in an atmosphere where the bargaining strength of the union is greatly reduced. Although the requirements of bargaining in good faith and of disclosure that exist under section 15 will ensure employees have access to information, these proposals do not require that an adjustment plan actually be concluded.

We believe these initiatives need to be strengthened by making the content of the adjustment plan outlined in subsection 41.1(5) mandatory and by giving the labour relations board the power to impose an adjustment plan if the parties fail to negotiate one, or to allow workers to strike if an agreement is not reached.

The Confederation of Canadian Unions supports the initiatives being taken by the Ontario government to reform the labour laws of the province. We think the package of amendments contained in Bill 40 is a reasonable response to documented injustices and inadequacies of the existing legislation. Contrary to much of the hysteria that has been generated by the business community over these reforms, we want to assure the members of this legislative committee that the sky will not fall when Bill 40 is enacted, nor will unions be running the province. Hopefully, the reforms will extend the benefits of collective bargaining to some workers who are in most need of them and will support a more mature and responsible industrial relations atmosphere throughout the province.

I want to thank you for listening to our views today. I hope they will assist you in quickly enacting Bill 40 into law.

**The Chair:** Thank you. Five minutes per caucus. Ms Witmer, Mr Turnbull, please.

**Mrs Witmer:** Thank you very much for your presentation, Mr Lang. I'm not quite sure who the Confederation of Canadian Unions is. Can you just give me a little bit of an overview?

**Mr Lang:** Well, I said we represent 25,000 workers across Canada and 8,000 are in Ontario. In the sectors where we have workers, we have 15 national or regional unions that are affiliated to the CCU. In Ontario, we have workers in the mining sector, in transportation and communications and we have some workers in hospitals, the quasi-public sector and university employees. I think that about covers them.

The Confederation of Canadian Unions was founded in 1969 as a central organization that was committed to building Canadian unions and an independent Canadian labour movement. At the time, most of our affiliates were breakaways from the international unions or the American unions, as we refer to them, and in the interim, the CCU has been a catalyst in bringing about the Canadianization of the labour movement today.

When I began in the labour movement, less than 40% of workers in Canada belonged to Canadian unions. Those figures are reversed today. There are over 60% and the labour movement is firmly in Canadian hands. I think the Confederation of Canadian Unions has played an important role as a catalyst in keeping that issue at the centre stage of the labour movement over the last quarter of the century.

**Mrs Witmer:** Then you do have members in British Columbia?

**Mr Lang:** Yes.

**Mrs Witmer:** I guess that's where I'd like to focus my question. As you are probably aware, they're also making changes to the labour law in British Columbia. However, because of the process they've used, the business community in British Columbia is certainly much more receptive to the changes. They feel they've had an opportunity for identifying issues and, through consensus, attempting to resolve problems.

I'm wondering how we could have done things differently, instead of having the polarization in Ontario that we have and people beating each other over the head or making comments that certainly aren't appropriate and that have exacerbated the discussion. How could things have been done differently? We all recognize that changes need to take place, but I guess it's the manner in which it has been done.

**Mr Lang:** Well, I've been very active in the process that has been going on in BC. Half our membership is in British Columbia and I spend a fair bit of my time out there. I think one of the things I've learned in the labour movement for the last quarter-century is that it's always very easy to get agreement if you agree with your opponents, and I think that if you look at what the NDP has



done in British Columbia, it hasn't proposed anything of any substance. It is true that the labour movement in BC, at least in its top leadership, seems to be prepared to go along with that, but I can assure you—although it's not in the headlines—that within the rank and file of the labour movement in British Columbia there's a tremendous amount of discontent.

I would not want to bet very much that the NDP in British Columbia is going to succeed on the current course, so there's no fuss in British Columbia because the NDP hasn't proposed anything. The most they've proposed is setting up commissions and everything, but in terms of any substantial reform of the labour relations process, there's been nothing forthcoming from the NDP on that. The labour movement so far has been silent, but don't hold your breath that it's going to remain like that.

**Mr Turnbull:** On the question of security guards: As you know, this legislation allows security guards to be part of the same union, albeit not in the same bargaining unit. The security guards will have the right to refuse to cross a picket line or to go to work. Can you tell me, in that circumstance where they refuse to go, who you think should be responsible for public safety in a situation like that? Do you imagine that an employer would still be liable for the safety of the public?

**Mr Lang:** In Ontario it's not my experience that employers, during strikes, pay much concern about public safety. In what circumstances are they liable now? I can tell you, again from our experience in BC, where for certainly over a decade security guards can belong not just to the same union in the plant but the same bargaining unit in the plant—

**Mr Turnbull:** You are not answering my question.

**Mr Lang:** I am getting around to it. I'm saying that there have been no examples that I'm aware of of the public being jeopardized by that or the employer's property being jeopardized by that. There are provisions that they can make, other means to ensure that their property is protected.

**Mr Turnbull:** How can they do that?

**Mr Lang:** But we just went through, in British Columbia, a five-week strike of the pulp industry this summer.

**Mr Turnbull:** Excuse me—

**The Chair:** Thank you. Mr Hope, please.

**Mr Hope:** Mine is very quick. I was just noticing the paper that you've supplied us with, called Fool's Gold. I notice there is a little child with his father—

[Failure of sound system]

**Mr Hope:** —different tone, this chamber of commerce, than the one in Ontario, let me tell you. This one says here:

"Many businesses in Yellowknife are supportive of the union as well. Nobody likes to see outside workers coming in and taking over our jobs," said the president of Yellowknife Chamber of Commerce. "The miners are our neighbours and friends," he added," and I find that's very different than the tone of information that we've been receiving throughout these hearings.

Then he talked about BC, and I am just wondering what the chamber of commerce and the business community are proposing as far as replacement worker legislation in BC.

**Mr Lang:** What I would say is that they are taking a similar position to Ontario. They're opposed in British Columbia to any laws that would prevent replacement workers, as far as I'm aware. I'm not up to date on any of their briefs, but I haven't seen any indication there that their position is much different from employers in Ontario.

1420

**Mr Ward:** I'd like to thank you for your excellent presentation from the CCU. There's a rich history in my community of Brantford. I think Harding Carpets was one of the first workplaces to break away from the international. Madeleine Parent—I'm sure you're familiar with her.

**Mr Lang:** And Texpack and the Texpack strike, which is probably a good reason why we should have had this legislation in 1972 and not 1992.

**Mr Ward:** I think you can relate to the Harding Carpet strikes in the 1950s as well.

You mentioned that you've been involved in the BC process a little bit, but here in Ontario as well you've worked with the consultation process. We've been talking about updating the labour act for going on a year. Do you feel that all the issues have had adequate time to be discussed; that both the critics and the proponents of Bill 40 have had enough time to express their opinions and have had adequate opportunity through presentations such as these hearings or to provide written submissions; that in fact it's time now to move to the next stage, which is to present Bill 40, however it ends up, in the House and finally have third reading and adoption?

**Mr Lang:** Yes, obviously I think that there's been ample opportunity. There's no question that there's a strong difference of opinion, but I think it's now time for the action these opinions have expressed. To my mind, quite frankly, as a labour leader and, I don't mind saying, as a supporter of the NDP, I think you've been too generous listening to the opponents of the bill. I certainly don't think there should be any more watering down of this legislation, because there's nothing left. And when you combine that with the other programs of the NDP, from car insurance to—all we're going to end up with is anti-scab legislation and casinos. That's not—

**The Chair:** Not much of a legacy, is it?

**Mr Lang:** No.

**Mr Wood:** Just briefly, I notice on the front page of the pamphlet that's been passed out that "Scab labour must be outlawed." It's concerning the Yellowknife miners' battle. I can sympathize with what is going on there. As I mentioned earlier in the hearings, there is a monument between Kapuskasing and Hearst where guns were used to settle a labour dispute and 11 people ended up on the ground. Three were dead and eight survived, but history sometimes repeats itself. We're fortunate here that maybe

nobody's been killed as yet, but there has been in northern Ontario over the years. It's sad to see—

**Mr Lang:** Can I interrupt you? I was on a picket line just last week at Unionville. It's a strike that hasn't gotten any attention; there's been no violence or what not. But a guy came through the line, a neighbour—this had nothing to do with the company—and said: "I feel in the mood like I should kill somebody today. I'd like to kill somebody today." Now, that was dispersed. There were union people there and the guy was sent away and everything, but you wouldn't believe what happens on picket lines. That happened last Thursday here in Toronto and I was witness to it.

There are people out there who figure that because there's a picket line, they can do things. I'm not going to try to claim that there's violence that occurs at picket lines and union members aren't involved in some of that, but there's a lot of stuff that happens on picket lines that would make people's hair stand on end because of this general atmosphere that it's fair game for violence. The anti-scab legislation should eliminate some of that if it works properly.

**Mr McGuinty:** Thank you for your presentation, Mr Lang. I want to focus as well on your presentation as it relates to the anti-replacement-worker provisions in Bill 40. Your description of what is going on in Yellowknife and Mr Wood's description of something that took place in his riding some 23 years ago I think bear little resemblance to—

**Mr Lang:** Excuse me. Little resemblance?

**Mr McGuinty:** —bear little resemblance to what happens in Ontario in 1992.

The Ministry of Labour's own statistics tell us that, first of all, there are very few strikes. There were only 94 in Ontario last year, and only 19 of those would have been affected by Bill 40 in terms of prohibiting replacement workers.

What I'd like to focus on is that you go on to say, "Listen, we've got to get this replacement worker stuff through because it's going to lead to an end of the violence that we're seeing on the picket lines." Then, notwithstanding that, essentially you say you're concerned as well about the employers' continuing ability to stockpile in off-site warehouses and to move machinery and equipment to new locations where they can continue to operate during a strike.

So I see the main focus of labour, in connection with the anti-replacement workers—I see the violence, given the numbers and given the recent history of what's happening on picket lines, as mostly smoke. I see the real focus of labour here as to prevent an employer from operating during a strike.

I want you to focus on that for a moment. Let's forget the violence end of it. You see it as something fair; that if we have an employer and there's a strike going on, it is fair that you shut him or her down as completely and as fully as possible. Do you agree with that?

**Mr Lang:** Yes, for the work that is being done by the employees on strike.

**Mr McGuinty:** I want to get into a bit of the philosophy of this. The worker, of course, contends that there's a job there and they do want that job to be carried on. But essentially in this province, when there's a strike, employers just limp along. Strikes on the whole don't last that long. They're ultimately resolved, and the employer pays the cost.

It just strikes me as being unfair, if you want to shut them down, to completely make them bleed as much as they can, and on the other hand, the worker, for instance, is entitled to seek an alternate source of income, if it's feasible, if it's possible. There's nothing prohibiting them from doing that; there's been no suggestion that we should do that.

Can you discuss that a bit more for me? Why is it that you think you've got to shut them down completely and you don't want them just to limp along?

**Mr Lang:** No, because for some employers it's true they may be limping along, but others will try to maintain the production.

The point is that it seems to me when we go through all of this process to come under the rubric of the Labour Relations Act—organizing the sign-up, the certification, then the bargaining procedures and the mediation, all of that—and you come to an impasse at the end, it seems to me quite reasonable that we say, "Okay, because workers have chosen this process, when you come to this impasse, the work that they have done remains frozen." That's the basis of the economic pressure for both parties. Okay?

Just say we go through all that process. Then, when you reach an impasse, the employers are free to attempt to carry on business as if all of this thing, industrial relations, didn't mean anything. It invites a system that leads to bitterness and a system where the collective bargaining process is not given any real credibility. What anti-scab legislation will do is to put more focus on the collective bargaining process. It will make that more meaningful.

We can create some examples of anti-union employers who basically don't want to settle under any conditions, and they still have that avenue. They can close up their plants and move someplace else etc, and some of them undoubtedly will do that. But in the case of hard bargaining, what we're going to eliminate is how some employers are tempted to try to stockpile, to hire scabs—replacement workers—to carry on production rather than focusing on the issues that are in front of them and what their employees are saying they want and dealing with that.

1430

It seems to me there's no question that the impact this legislation is going to have is that it will force the employers and the unions at the bargaining table to deal more assiduously with the differences that exist between them and to bargain solutions to them rather than hammering each other on the head on the picket line, as we've seen. Yellowknife is a perfect example of that, where it's costing the employer. When you count up for scabs, for the helicopters, for security guards, they're not making any money there. Then, on top of that, it's costing the people of Yellowknife \$58,000 a day for extra RCMP. Surely we can



devise a better system than that in industrial relations. I think this is an important step in that direction.

**The Chair:** Thank you to you, Mr Lang, and to the Confederation of Canadian Unions for participating in this process. You've made an important contribution and we're grateful to you.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Chair:** The next participant is the Ontario Public Service Employees Union, if those people speaking on behalf of OPSEU would please come forward, have a seat and tell us their names and titles, if any. We've got your written submissions. They'll form part of the record. Please try to save the second half of the half-hour for questions and exchange.

**Mr Fred Upshaw:** Thank you very much. My name is Fred Upshaw and I'm the president of the Ontario Public Service Employees Union. With me is my executive assistant, Frank Rooney. On behalf of the 105,000 members of the Ontario Public Service Employees Union, and especially the 23,000 who work within the provisions of the OLRA, I am pleased to be before your committee today.

My union's written submission addresses certain selected reforms within Bill 40. In some cases, we feel the reforms fall short of our wishes for the workers of this province.

OPSEU joins with the Ontario Federation of Labour in embracing the direction of the amendments. We also commend this government for standing up to the barrage of blatant distortions coming from elements of the business community at these hearings. They are acting like crybabies, spoiled by years of special treatment at the hands of friendly governments. Big business is used to the government acting for it rather than for our society as a whole.

Employers in this province must recognize that times have changed, just as the nature of the workplace has changed. Women have taken their place in the working world. No longer will they tolerate being stuck in low-wage jobs with no protection from the boss. They won't tolerate a situation like we had in Hamilton and Mississauga four years ago, where 60 women lab technicians were locked out by a cut-throat private employer and eventually lost their jobs after six months on the picket line. Working women will no longer tolerate being stuck in a service sector where their wages are left to the lowest bidder.

Ontario's service sector has grown. Workers in this sector need the protection of unions and the right to have their say, and we are organizing them in great numbers.

I'm here today to tell members of this committee that these labour reforms will be good for the economy in the long run. Rather than crying about these labour law amendments, the business community should be welcoming them. These amendments will help usher in a new era of less turbulent labour relations in Ontario. They will correct the imbalance of 100 years of Tory and Liberal rule.

Working people face many barriers in organizing and bargaining for decent wages, for safer working conditions, for better pensions, yet these are the things that give us a better quality of life in Ontario. These are the things that also enable us to buy the goods that will get this economy

moving again. Workers spend their wages in the local communities, and that's good for business and that creates jobs. Rather than take away jobs, as some have predicted, labour law reform will help our economy in the long run. Collective bargaining helps put higher income in the pockets of the workers, who will spend it here in their Ontario communities and their local businesses. That's why I think that when the small-town chambers of commerce speak out against this reform, they are misrepresenting their own membership.

A couple of months ago I had the opportunity to spend some time in a native community in far northwestern Ontario, where an elder and the chief of the reserve shared some words of wisdom. Native people are poised to take control over services on first nations reserves. The chief of the Eagle Lake First Nation told us that he would welcome the unionization of his band's employees because it would eventually mean more money coming into his community and more benefits for his people. For example, native child welfare workers on first nations reserves earn only a fraction of the wages of provincial workers doing the same job. Unionization means bargaining for better wages, and that means there would be more money to spend on housing and services on the first nations reserves.

That chief made the vital, logical connection of why unions are good for the economy. I think the chief is very wise and realistic and showed a foresight that is missing among representatives of the employer groups and businesses that have come crying to your committee.

I'd now like to talk about the experiences of some of my own OPSEU members. We see the need for stronger labour legislation every day of our working lives. Our members work to assist all the most vulnerable groups in society: children, single parents, elderly people, disabled people, psychiatric patients, students, poor people, people who have lost their jobs, people who want to get their lives back together, people who need protection who can't fend for themselves or who have committed illegal acts. We know through our day-to-day work how hardship and struggle cause these breakdowns in society. We also know that life can be improved through better, higher-paid jobs, through better health care and benefits and through better pensions.

Our members negotiate all these things. They gain them first through the right to organize into a union and the right to bargain a contract. The better the bargaining power, the better the contract. We're glad this government has at last introduced measures to destroy many of the barriers that stop workers from gaining their fair share in Ontario.

We commend the government for introducing measures that will bring greater strength to those who have been left unprotected: women, native people, visible minorities and part-time workers. In the long run, this legislation will help them get ahead. We welcome reforms to the organizing process and the union certification process. Greater union access to workplaces, limiting the use of anti-union petitions and speedy hearings for people dismissed during organizing drives are badly needed improvements to empower many workers.

We also share the Ontario Federation of Labour's concerns about access to employee lists and a need for first-contract arbitration. We have had difficulty negotiating first agreements with small government-funded agencies run by private operators. We have been forced to strike because these agencies have no incentive to negotiate, since they are not accountable to anyone for maintaining good labour relations. They hire high-priced, anti-union lawyers, paid for by the taxpayers of Ontario.

1440

Now a word about the parts of the bill that allow the labour board to combine existing bargaining units, part-time and full-time.

Bill 40 recognizes that all workers, regardless of the size of their workplace or their hours of work, deserve a seat at the bargaining table.

Bill 40 recognizes that the number of part-time workers in Ontario is now almost one million, and one million women have joined the workforce since the OLRA was last reviewed.

Bill 40 goes partway towards balancing the relations between employers and employees in this province, but it's clear that we need to move even further than the provisions of the current amendments to address the changing makeup of our workforce. I'm talking about sectorial bargaining in the broader public service. The committee should consider extending the principle behind consolidating bargaining units to pave the way for centralized bargaining in certain sectors.

As the broader public service expands and we get more and smaller community service agencies, we must ensure that the principle of meaningful collective bargaining is not undermined. Workers in these agencies need to have a seat at the bargaining table with the government that supplies their paycheques. That's not how it stands now. As the provincial government divests and downloads services to the broader public sector and the municipalities, the wages and benefits of workers doing the same jobs have declined and vary from community to community.

As I have stated, we have great difficulty negotiating agreements with these small agencies. Workers delivering human services in small communities are obliged to accept less pay and diminished benefits. Is this an acceptable outcome of the drive towards community-based public services? This system means less money for people working in the communities and the whole community suffers as a result. Low wages hurt the whole community, and hurt services as well.

One of my members working in a children's mental health centre tells me that because of the difference in wages across the province for workers doing the same job, his agency has a very high turnover of staff. Workers leave for higher salaries in the public service or other agencies. They leave their communities. The result is also low morale and poor service. The result is understaffing in these agencies, leading to tragedies like the murder of Krista Sepp. She was killed while working alone overnight in an open-custody facility. You could blame her death on the young offenders who were convicted, but you could also trace her death back to the system whereby agencies are forced to

operate on a shoestring and workers have little or no bargaining power.

OPSEU staff representatives working in 20 regional offices across this province know many other such stories, not as tragic but painful just the same. They negotiate collective agreements for hundreds of small agencies, more than 350 contracts in all. Our reps face high-priced Toronto lawyers across the table, retained by agencies, employers, and paid for by you and me through tax dollars. Hundreds upon hundreds of these negotiations every year eat up crucial provincial budget dollars. Is this a wise investment in Ontario's future?

I say this is a waste of money. It would be much more equitable and cost-effective for these negotiations to take place centrally, where all agencies and local unions in a sector could be represented. The labour board should have the authority to create a rational, consistent pattern of negotiations, sector by sector, right across the province. This would allow a mainly female workforce to accomplish greater pay equity, and it makes special sense now when there seems to be no new money to fund Ontario's services and there is hardship in communities like we have not seen since the 1930s. So we would ask that this committee consider giving the labour board the authority to order central bargaining for public service agencies that do similar work across the province.

Finally, I'd now like to comment on the replacement worker section of this bill, which has gotten the most publicity. We all know that when the employer buses in scabs, it provokes violence on the picket line. My union welcomes the sections of Bill 40 that will put an end to the transferring and contracting of scabs. OPSEU has had some very unfortunate situations, notably in private medical labs, where our members have been locked out, lost their jobs to scabs. The CML lockout in Hamilton and Mississauga kept women out on the street for a whole winter. Then they lost their jobs to scabs.

For the sake of all workers, but especially those working for ruthless employers, we need to put an end to the bad labour relations that follow the use of scab labour. We urge you to further close the loopholes so that employers cannot legally contract out, move work to other locations and have non-bargaining unit workers and supervisors perform our work.

My union also had concerns about the implementation of essential service provisions of the act in relation to the use of replacement workers. We were concerned that public sector workers who now have the right to withdraw services would be penalized under this bill. But this legislation strikes a balance between the public's view of some important services and our members' concern about being able to mount an effective strike. We believe that the key to maintaining services that are essential lies in both sides being able to negotiate emergency coverage in the event of work stoppage.

OPSEU members, in providing basic public services, have demonstrated a high level of commitment even when the chips were down. I speak from the heart as a psychiatric nurse working in a large public hospital. We have for



years risked our jobs and our lives to make sure that public safety comes first.

Strikes in the ambulance sector have not resulted in loss of life. Correctional officers have maintained order in jails while at the same time making their feelings known. The record shows that in the few times OPSEU members have been forced to withdraw services, sometimes illegally, our patients and clients have not suffered and public safety has been safeguarded.

You will soon end hearings on this bill. I hope you will reflect carefully on what so many workers, trade unionists and other advocates of social and economic justice have been saying. Everyone in Ontario, especially vulnerable groups, women, native people, visible minorities and part-time workers, deserves a labour law that offers empowerment and protection of their rights.

You have heard the ranting of the spoiled crybabies representing the employers. In my submission, the opposition to this bill is based on shortsighted self-interest. The employers seek to maintain the current imbalance in the workplace that leaves many thousands of workers without a voice at the bargaining table. It's time to listen to the representatives of the people who will be most affected by this legislation: the organized and unorganized workers of Ontario. In the long run, this bill will benefit the economy of all of Ontario's communities by giving workers more bargaining power and better working conditions.

**The Chair:** Thank you, sir. Three minutes per caucus.

**Mr Huget:** Thank you very much for your presentation. There are a number of interesting issues you speak about in your presentation, but I want to deal specifically with the part-time versus full-time worker situation. In some cases, certainly that I have heard, those who are opposed to this bill have suggested that part-time workers and full-time workers have no common interests.

In fact I've heard it suggested that perhaps part-time workers are not interested in benefits and they're not interested in all those other things that full-time workers have; money is what they're interested in. I don't share those views. I would just like to know what your views are. Do you believe the suggestion that part-time workers and full-time workers have no areas of common interest?

**Mr Upshaw:** Whoever made those types of recommendations, I'd like to introduce them to some of my part-time people. In most instances they're working part-time hoping to get on full-time, and that salary they receive as part-time goes a long way in ensuring that their families are being clothed and fed and have a roof over their heads. And so the benefit portion is extremely important to those families. No one can convince me that part-time and full-time employees don't have the same interests.

**Mr Huget:** I think unfortunately there are still members of society who feel that people who work part-time are working for pin money, and that's just not the case. The workplace is changing and the needs of workers are changing as well. I believe it was a member of the third party who suggested that perhaps part-time workers were not interested in benefits and I just wanted to get your views.

I defer very quickly to Mr Hope.

**Mr Hope:** One of the areas I wish to touch on, Mr Upshaw, is from Project Economic Growth. They made a recommendation to us, and this morning we were briefly informed about women who were asked to take a \$3-an-hour pay cut and they're still out on the strike line while replacement workers are being used. Project Economic Growth put forward that you should be allowed to use replacement workers for 60 days while workers and their families are out on the streets. I'd just like your viewpoint on that because if I wait for the Tories, they're going to tell me you're one of the fat cats.

1450

**Mr Upshaw:** I'll tell you, I've been out on the picket lines and it's not a pleasant situation, yet it's a necessity to force an employer to sit down and negotiate with the workers for a fair and equitable package. When you see employers who give themselves tremendous increases in wages and yet say to the predominantly women and visible minorities in the workplace that they don't deserve the same types of increases, then it's time that we have this type of legislation that says once and for all that when the workers withdraw their services, the employer should be put in the same position of having to sit at that table without profiting while these people are out on the picket line.

**Mr Phillips:** I must say that as this proceeding goes on I get more and more despondent about the future. My problem is that it looks like we have two camps and neither side listening to the other. I'm very discouraged by your remarks because I think you've kind of lumped the whole business community together. You're not the first union leader who's come saying—I think you used the term—"spoiled crybabies" and "the business community, they're all crybabies." We've heard terms like "hysterical."

We've heard another union leader say they want to start a class war, and on the other side, the business community, I must say I have not yet run into one single business person who hasn't expressed significant concerns about it. I understand there are bad apples out there in the business community, but I also truly understand there are a large number of fabulous employers out there who resent the union leadership categorizing them as hysterical, spoiled crybabies.

The point I'm getting at is that I find it very discouraging to see this tremendous, incredible polarization, with you leading one of our most respected, largest unions, representing the people who serve the public, and believing, as I'm sure you do in your heart, that the business community are spoiled crybabies. We have a huge problem here.

We talk about partnerships and looking ahead at partnerships—anyone listening to this debate says the likelihood of partnerships is so remote as to be almost not worth betting on, because if you believe what you said today, truly believe it, there's not going to be a partnership; there's going to be an ongoing conflict.

My question, because I'm beginning to despair about the future, is this: If you were an individual who was looking to create some jobs in some environment, why would you ever want to put yourself into the Ontario environment

where the future leaders—and there's no doubt that when this bill passes, and it will pass, it's all set, the union leadership will have more say in the province.

Why would you want to go into partnership with union leaders such as yourself who believe in your heart that the business community are spoiled crybabies and exploiting people? Why wouldn't you go somewhere else where at least somebody has an open mind and will evaluate you on the basis of whether you, as an individual, and you, as a company, are fair or not fair and will not categorize you as part or total spoiled crybabies?

**Mr Upshaw:** Let me first of all say I'm appalled too when I see the millions of dollars that are spent out there with billboards that pop up all across this province. You tell me they got there by themselves? I'll tell you where it came from. It came from the business community.

Am I concerned about partnership? Thank God that my employer right now is a government that does work in partnership, and because of that partnership, we're finally starting to see things that we fought for years and years under the Tories and under the Liberals. That's partnership. I'm experiencing partnership. I'd love to see this entire province operate under true partnership, not millions of dollars on billboards trying to fight against workers' rights.

**Mrs Witmer:** I find it unbelievable. You talk about partnership and this government working in partnership and you talk about protecting workers' rights. I don't believe you and I'll tell you why: This government is proposing to make changes to the Crown Employees Collective Bargaining Act. This would force over 13,000 people to join your union. These people don't want to join. I say to you, not only do they not want to join, they also don't want to give up the seniority, which you're saying they have to give up.

Are you going to force those people, if they're forced by this government to join your union unwillingly, to give up their seniority? You have demonstrated you don't care about the rights of those 13,000 people. They're not even going to have a vote on whether they want to join you or not.

**Mr Upshaw:** I'm rather appalled that you don't understand the negotiation procedure. I'm at a table negotiating and some people from a particular party drop some information in the House that was being negotiated at a table. There are no conclusions at this time with respect to what's happening around CECBA. I'm prepared to discuss at any time what the amendments proposed to CECBA are, but let's get some legislation so we have something to discuss.

But right now we're at the table and I've never heard of people taking things from a negotiating table. Everybody knows the process; you come in high and hopefully there'll be a win-win situation at the end. But take our opening submission and put it out in the press, drop it into the House without consulting the parties and say, "That's what's happening," it's unbelievable.

**Mrs Witmer:** Are you going to force these people to give up the seniority they've had working for this government 20 and 30 years?

**Mr Upshaw:** I don't have the authority to force those people.

**Mrs Witmer:** So you will not force them to do so?

**Mr Upshaw:** I have to wait and see what the legislation says.

**Mrs Witmer:** Well, if you really believe in workers' rights, I hope that these 13,000-plus people will have an opportunity to freely express whether or not they want to join your union or any other union, and I hope Bob Rae will live by the same standards that he's forcing on the private sector.

**Mr Upshaw:** If you look at some of the memos those very people are sending around to each other and if you look at the meetings they're having, which obviously you're aware of, you'll see that they have had the opportunity to express themselves. So I don't see what the problem is. The legislation in the end will make the determination. I don't control the legislation.

**Mrs Witmer:** They have not had an opportunity to express themselves. They were allowed to leave a voice message; they were not informed beforehand when meetings were taking place. If you say that's fully informing people and giving them an opportunity to express themselves, I can tell you that has not happened.

**Mr Upshaw:** I can show you correspondence between that group—and they have had representatives who have gone across this province and held meetings to give everybody an opportunity to speak.

**Mr Turnbull:** That's not what they're telling us.

**Interjection:** Welcome to the new age of cooperation.

**Mr Turnbull:** All I can comment on is, judging by the number of calls we've had in our offices from those employees, what you're saying is patently untrue.

**Mr Upshaw:** You can believe what you want—

**Mr Turnbull:** I'm believing the people who are being pressured into this.

**Mr Upshaw:** —but that doesn't mean that what you say is true.

**Mr Turnbull:** I'm believing what we are being told by those people who are affected by it, sir.

**Mr Upshaw:** Oh yes, but you don't believe in coming to the parties who are at the table—

**Mr Turnbull:** You stand to get something like \$12 million a year in union dues out of these people, and you have stated you're not going to give seniority to these people. So please don't come to this committee and on public television suggest something which is contrary to that. You know quite well what you have said.

**Mr Upshaw:** I'm saying to you that we're at the negotiating table—

**Mr Turnbull:** And your opening negotiation is that you won't give any seniority to these people.

1500

**Mr Upshaw:** It's bad policy, bad practice, to take negotiating items that are still being negotiated on the table,



drop them off in the House and say, "This is fact," when it's not fact until it's negotiated.

**Mr Turnbull:** Well, your opening position is you won't give any seniority.

**Mr Upshaw:** You're wrong.

**Mr Turnbull:** I'm not wrong.

**Mr Upshaw:** You're wrong.

**Mr Turnbull:** That's what they're telling us.

**The Chair:** Thank you very much, Mr Upshaw. We appreciate your attendance here.

**Mr Hope:** Let's negotiate in the media.

**Interjection:** That's it.

**The Chair:** The Ontario Public Service Employees Union represents a significant constituency in this province. Your views are valuable ones to this committee and the committee is grateful to both you and your membership that you've taken the time to express those views here. Thank you kindly, sir.

**Mr Upshaw:** Thank you.

**The Chair:** My apologies to the translation staff and to the Hansard staff for Mr Turnbull speaking over Mr Upshaw. I appreciate that causes difficulties, but I apologize.

#### ASSOCIATION OF FOUNDATION SPECIALISTS OF ONTARIO

**The Chair:** Our next participant is the Association of Foundation Specialists of Ontario. Would they please come forward, have a seat, tell us their names, their titles, if any, or if they want to, and proceed with their comments. Try to save at least the last half of the half-hour for exchanges. You can see how enlightening—perhaps or perhaps not—but lively they can be. Go ahead.

**Mr Bill Lardner:** My name is Bill Lardner. I am one of the founders of Deep Foundations Contractors Inc. With me are Gordon Demetrick, founder of Anchor Shoring Ltd, and Manny Fine, a vice-president of Birmingham Construction Ltd. We represent the Association of Foundation Specialists of Ontario, comprised of nine small to medium-sized businesses and employing about 500 people.

Our submission has three quite separate themes:

First, we believe many of these proposals, if adopted, are inequitable and, worse, are going to seriously impair Ontario's competitive position.

Second, there are changes that can be made that would improve the existing labour relations structure significantly. These changes should be incorporated in the proposed legislation.

Our third theme is a little bit long-range. We say that the construction industry trade structure is restrictive and technologically obsolete. It is maintained in the narrow interests of specialist trade contracts and individual trade unions.

As far as the current proposals are concerned, the preamble that currently exists reads:

"Whereas it is in the public interest of the province of Ontario to further harmonious relations between employers and employees by encouraging the practice and proce-

dures of collective bargaining between employers and trade unions as the freely designated representatives of employees."

This would be replaced by a purpose clause which sets four objectives:

"1. To ensure that workers can freely exercise the right to organize by facilitating the right of employees to choose, join and be represented by a trade union of their choice and to participate in the lawful activities of the trade union."

What about those workers who don't wish to be represented by a union? The recent Environics poll of June 1992 shows that a very strong majority of non-union workers would feel unhappy about having to join a union. We think this first objective would only be accepted if we added to it, "...and to freely exercise the right to work without being represented by a trade union."

The second objective is:

"2. To encourage the process of collective bargaining so as to encourage,

"i. the ability of employees to negotiate with their employer for the purpose of improving their terms and conditions of employment."

As an objective for a union, this is excellent, but it's not appropriate for inclusion in the Labour Relations Act. You've got to keep in mind that collective bargaining is a blunt instrument. It's intended to provide a rough balance of power between labour and management. This balance isn't easy to maintain. From time to time, unions obtain and abuse a strong bargaining position. Circumstances may demand a rollback of previously conceded benefits.

Point 2 of this objective:

"ii. The extension of cooperative approaches between employers and trade unions in adapting to changes in the economy, developing workforce skills and promoting workplace productivity."

At first glance it looks as though it's non-controversial. We all agree we want to improve workplace skills, but whether the act is the best way to handle this particular objective is a serious question. We're concerned that the inclusion of this phrase could result in unsatisfactory rulings by the labour relations board, particularly in relation to the increased powers given to the OLRB in this proposed bill.

"iii. Increased employee participation in the workplace."

But in what? There should be more and better supervised participation in union affairs than is generally the case today, or is the phrase intended to mean participation in ownership? It's a good idea in theory, but in practice there are a number of problems which need to be recognized. As it stands, we think this phrase is meaningless, so we recommend that even if the purpose clause is retained in any form, at least this objective should be deleted in its entirety.

The third objective reads:

"3. To promote harmonious labour relations, industrial stability and the ongoing settlement of differences between employers and trade unions."

We get a bit nervous about this because the discussion paper for this clause of the bill originally contained the phrase, "arising in collective bargaining and under collective agreements," and that's been dropped. It makes the clause too broad, particularly when you consider it along with the additional powers given to the Ontario Labour Relations Board to impose settlements.

Objective 4 reads:

"4. To provide for effective, fair and expeditious methods of dispute resolution."

This we regard as an acceptable objective.

If the purpose clause is retained, we strongly suggest that an additional objective be included, reading, "to eliminate restrictive practices which hamper improvements in productivity." This proposal is discussed in our third item below in relation to the construction industry. It probably has justification elsewhere.

Despite the fact that we don't disagree with one of the four objectives, we have to ask if the change is necessary at all. The preamble has a significant effect on legal interpretation of any piece of legislation, and we think the proposed purpose clause should receive very strict examination to explore its possible effects before any change is made to the existing preamble.

So much for the purpose clause.

Our general comment on the bill: We share the widespread view that Bill 40 will have a bad effect on our economy. Both the Ernst and Young report of February 1992 to the Council of Ontario Construction Associations and the Environics poll should be adequate reason to question the wisdom of the proposals.

We do attach a few detailed comments on some of Bill 40's proposals in the appendix to our brief, but we think if the government is still of the view at the end of these hearings that the objections being raised to Bill 40 are invalid, at the very least it should itself commission a truly independent and objective study of the impact of the proposed legislation.

We do believe there should be some changes made to the Labour Relations Act and some that could be made now, but in general, these aren't being considered. One thing that isn't being considered is that as things stand now, not all the parties affected by the collective bargaining process are at the table. Where is the protection for the economic health of society as a whole when a strong and greedy union imposes its unreasonable demands? That does occur.

1510

If you do proceed with Bill 40, there are two basic areas where you need to look for some corrective legislation.

Union democracy: We suggest that voting procedures be legislated and that acceptable procedures be defined for the dissemination of information in connection with collective bargaining negotiations and with secret ballots on certification, strikes, election of officers and so on. Currently, in many unions the votes of a small percentage of the membership actually present at a meeting can determine an issue. On certain important issues it should be mandatory that at least a specified percentage of members cast a ballot if the vote should be acceptable. Write-in

ballots should be used, with full legal safeguards to ensure the secrecy of the ballot. The voting and the tabulation should be supervised by the Ministry of Labour or by a legal or accounting firm approved by the ministry.

The other area that needs attention is the Ontario Labour Relations Board. It now has powers equivalent to those of members of the Supreme Court of Ontario. We ask: Are its members, particularly the vice-chairs, of competence equivalent to that of judges of the Supreme Court? We suggest that appointees should be people with exceptionally strong legal or labour relations background, and those appointments must reflect the absolute neutrality essential to the position.

Our last area of concern is the construction industry's trade unions. Employers are caught in the crossfire and infighting between the unions representing their workers. Assignment of work among the trades is jealously regarded by each of the trades and narrowly interpreted. Jurisdictional disputes are rampant. They are often contrived so as to slow the work, prolong the job and maximize earnings.

These barriers to efficient multitrade practice exist only because of the narrow interests of individual unions and some of the specialist trade contractors such as in plumbing, electrical etc. There are no sound reasons why this archaic system should be permitted to continue. Any qualified person should be able to work at tasks within his or her competence. It would be better if the unions in the construction field were completely revamped and rigid job classifications removed so that a worker could undertake any task within his competence.

The construction industry in Ontario set a bad example over the years of acceding to high wage claims. The settlements have contributed significantly to inflation. The fundamental reason is that the industry is virtually at the mercy of its unions.

Individual companies are relatively weak financially. Trades bargain separately. A strike by one trade can disrupt the whole industry, and this can be repeated time after time, as we've seen just this summer, resulting in a series of expensive disruptions. On the other hand, companies that are all saddled with the same cost structure have no strong immediate incentive to fight those demands. They simply feel they can pass on the extra cost to the consumers in the long run. Obviously this doesn't work.

The current balance of power in the construction industry strongly favours the unions. The result: excessive inflation and high costs. We have a very high cost construction economy here. It has caused a lot of damage to our economy and it is in society's interest to restructure the legislative framework so as to redress the balance. Provisions to accomplish this should be incorporated in any revision of the Labour Relations Act.

That's our submission, Mr Chairman.

**The Chair:** Thank you. We have 15 minutes, which means five minutes for each caucus.

**Mr Offer:** Thank you for your presentation. You've dealt with your themes, I think, in a very comprehensive manner. I want to, without question, move to the issue of



union democracy, as you've entitled it, and this legislation, Bill 40. I think if you've been following the hearings you will no doubt be aware that the issue of the process in organizing has been one which has been discussed quite often.

I believe that this bill takes away from the rights of the workers of this province in areas of their freedom of choice whether to join or not to join a union. I think it is clear; I think it is incontrovertible, and I do not believe, after close to five weeks of hearings, that I have heard one single argument that goes against that submission of mine. Bill 40 takes away the rights of workers in this province in the area of their freedom to choose whether to join or not to join a union.

It takes away from the rights of part-time workers as to whether they wish or wish not to be consolidated and combined. I think it's a little distressing that we in this committee hear that others believe it is in the best interests of part-time workers, whether they wish to combine or not to combine. I find it disappointing that some members, some union leaders, believe that they know what's best for part-time workers, when all we say is, "Give them the right to choose."

There has been the presentation made of a secret ballot to workers, free from intimidation and coercion from an employer, free from intimidation and coercion from a union organizer, fully informed. My question to you is, is that something which you could support as moving in the direction we would all hope to move, and that is, if workers in this province wish to be part of a union, then let them have the choice? Let them make the decision. Let it not be a decision made in some committee room at Queen's Park. I'd like to get your thoughts on that.

**Mr Lardner:** I quite agree, and I think that's almost behind that part of the submission on union democracy, and that is, the workers themselves, when they have a proper say in things, will exercise that responsibility properly. But at the moment, in many cases, they do feel intimidated, and they also have the feeling: "What's the use? It's no use my voting, no use my going out to the meeting. There's going to be a group there that isn't going to be swayed by what I say." They feel intimidated.

I think it's quite important, if we're going to have democratic unions, that we have secret ballots, and properly supervised secret ballots too, not supervised by members of the union.

**Mr Turnbull:** Welcome, gentlemen, a good brief, and a particular welcome to Mr Lardner, one of my constituents. Once again, Mr Lardner, you've got a thoughtful brief, as you always do, to all levels of government you present to.

A very quick question first of all. It's asserted by the unions that the business side in this discussion is being hysterical. Can you respond to that?

1520

**Mr Lardner:** No. We have a serious concern. You've got to keep in mind that in order to create and keep a business going, you've got to be able to anticipate the markets. That's almost the most important facility that any

owner or manager of a business has—anticipate your markets. If this bill goes through, we see it having a very serious impact on our markets. People are not going to want to come here, invest and build. Jobs are going to be lost.

**Mr Turnbull:** Thank you. Turning to page 6 of your submission, "Construction Industry Restructuring," can you just enlarge for me on the question of restructuring your industry and the impacts on productivity this would imply?

**Mr Manny Fine:** If I may, I'll try to respond to that. Our crews are members of the operating engineers' union, labourers' union generally. They're highly skilled in all the operations required to do the work involved in foundation construction, including replacement of reinforcing steel cages, as an example. On some sites, where there are many trades present at the same time, the rodmen's union, a division of the ironworkers' union, claims the jurisdiction of placing these cages.

This work is very intermittent. On a usual job it might be done in the last hour of the day, placing concrete and reinforcing steel. The nature of the work is such that it cannot be continuous work. When rodmen are employed, they're part-time workers paid full-time. This goes somewhat against the grain.

**Mr Turnbull:** Can you expand on that? What do you mean by, "They're part-time workers paid full-time"?

**Mr Fine:** There's nothing for them to do most of the day, but they're paid for the full day. This increases our costs. The cost of construction generally goes up; it discourages investment. In the end it costs jobs rather than create work.

**Mr Turnbull:** Do I understand correctly that your suggestion with restructuring is that you would allow several trades to do different things?

**Mr Fine:** As Mr Lardner has stated, it would be in the best interests of improved efficiency and lower costs of construction for a man to be able to do anything he's capable of doing properly, rather than having this very narrow structure where a specific trade must do work that requires no real skill.

**Mr Turnbull:** Presumably, that is going to increase the people's chances of being employed on a continuous basis, if they have that sort of flexibility in a workplace.

**Mr Fine:** That is correct.

**Mr Turnbull:** Thank you. In your presentation you talk about the third objective, "To promote harmonious labour relations, industrial stability and the ongoing settlement of differences between employers and trade unions." What undesirable effects do you see in this proposal?

**Mr Gordon Demetrick:** It means, basically, the unions could grieve anything at all and the Ontario Labour Relations Board would be bound to and have the power to deal with it in their way.

**Mr Turnbull:** Okay, so it's a question of the wording of this that you have difficulty with. Can you suggest some sort of amendment you would propose that would take the sting out of it from the point of view of your industry?

**Mr Lardner:** The best thing would be to drop the purpose clause altogether, but if you're going to put it in, I'd put back in the phrase "arising in collective bargaining and under collective agreements."

**Mr Turnbull:** Which was in it originally.

**The Chair:** Thank you. Ms Murdock, after Mr Wood.

**Mr Wood:** Thank you very much for coming forward with your presentation. As you're aware, we're into the fifth week of presentations now and tomorrow will be the last day before we get into amendments.

I just wanted to clarify some misunderstanding that might be out there on the part of even some of the committee members here, that some very modest and minor changes were brought into the amendments to the OLRA to cover four main areas, which were: new workplaces and the new workforce that is out there since the major changes were brought in since 1975, promoting cooperation and partnership, reducing conflicts, restructuring and restricting the use of replacement workers on the sites because of fatalities that have happened and dangerous driving charges for people barging through picket lines and one thing and another—it happened last winter in Hearst. This summer there's replacement workers being used by the town of Kapuskasing—things of this kind. So it's trying to eliminate a lot of those and streamline the process.

The information I have is that they're very minor and modest amendments that are being brought in because of the drastic changes in the workforce. It's not to address so much the unionized workforce that has been out there and unionized over the last 50 or 60 years, but it's to address the changes that have been taking place, since any major amendments haven't been brought in since 1975.

I just wanted to know if you had any comments to that. Sure, it might affect some of the unionized workforce out there, but there are a lot more women, visible minorities and part-time workers out there who are screaming and have been screaming for the last 20 years. "If you ever get elected to office, are you going to make some minor amendments to address this situation?"

**Mr Lardner:** I don't think we disagree that there should be some changes to the Ontario Labour Relations Act; the thing is like Alice in Wonderland. But I don't agree that the changes you're proposing are the ones that need to be made. In many cases, I think you're exaggerating the problems and you're trying to deal with a sledgehammer with something that should be dealt with with a fine pick.

You point to fatalities and so on due to what you call "scab labour." I suppose on the other side you can also point to the violence that's been exhibited by some of the union members and hasn't been properly disciplined by the union management. We can argue back and forth on that quite a bit.

But what's really needed for the Ontario Labour Relations Act is to sit back and take a look at this thing. It's a monster. It's created quite a few ridiculous situations. It should be totally revamped in the interests of the efficiency of our economy. You're just playing with it and tinkering with it and making it worse.

**Ms Murdock:** Not on the same vein at all, actually, you've made a couple of comments in your presentation in regard to the Environics poll. I want to direct my mind to that, because the Queen's Park reporter for the Ottawa Citizen wrote an article on the Environics poll specifically, and one of the first things that Environics has mentioned is that when they questioned, only 55% of the people even knew about labour relations. The reporter here goes on to say it's amazing that everybody didn't know, given the information that was out there on billboards and newspapers and every place else that you heard. Anyway, of the 45% who were unaware—it's Jim Coyle's article, so I'll read that portion:

"As for the 45% unaware of the proposals, this was of little concern to the pollsters. Respondents developed opinions fast," Jane Armstrong said, "'once we gave them a little bit of information and sort of educated them' about the potential impact...."

"The background given was this: 'The new legislation gives greater power to labour unions to organize and shut down employers' operations during a strike.'"

He goes on to say that it isn't surprising that after that statement was made, 35% more people said, no, this legislation would be very bad and shouldn't be introduced, whereas if the question had been that the proposals and the amendments are to improve the collective bargaining process on an act that already exists, I'm just wondering—

**The Chair:** Do you want them to respond, Ms Murdock?

**Ms Murdock:** Yes. Do you think it's fair in the way it was purported to have been given as a poll and then to be used as statistics by the business community?

**Mr Lardner:** I'm not a pollster, so I'm not qualified to comment on the way the Environics poll was taken. I am concerned, when I look at the result of the Environics poll, about the lack of support for the legislation that it indicates, even if you do take those figures into account. I do strongly feel—and I really do feel this—this is not a statement just for the sake of making it. I really think that if the government is not satisfied with, say, the Ernst and Young study, it should have an objective study made like that. I think that would perhaps help to resolve a lot of these questions. They're very serious questions. I don't know the answer completely to your comment about Environics, but I am concerned. I think there should be a proper study.

1530

**The Chair:** I want to thank you for appearing on behalf of your industry and the organization that represents that industry, the Association of Foundation Specialists of Ontario. You've made a valuable contribution to this process and we are grateful to you.

ONTARIO COALITION FOR SOCIAL JUSTICE

**The Chair:** The next participant is the Ontario Coalition for Social Justice. While that spokesperson is being seated, I want to apologize to the people in Welland because I won't be able to be there tonight at St Michael the Archangel Ukrainian Catholic Church when the 13th annual Welland Folklore Festival is being celebrated. Please, if



people in Welland who are watching and listening are at St Michael the Archangel Ukrainian Catholic Church, enjoying the great food and the great fellowship there this evening, I express my apologies, say hello to Father Dachuck and wish Yvette Ward happy birthday, because yesterday, September 1, was her birthday.

Please tell us your name and your title and go ahead with your comments and submissions.

**Ms Mary Ann O'Connor:** Good afternoon. My name is Mary Ann O'Connor. I'm the coordinator for the Ontario Coalition for Social Justice, a coalition of organizations representing senior citizens, students, labour unions, anti-poverty workers, peace and environmental activists, women and many other people. A statement of the coalition's principles and a list of member organizations is attached to my written statement.

The Ontario Coalition for Social Justice is currently conducting a province-wide campaign called "Justice and Jobs: We Can Have Both." Our six-point plan for moving towards justice and jobs is also attached to my statement.

One point in the plan concerns keeping up the quality of Canadian jobs, and it is in this context that we support the proposed amendments to the Ontario Labour Relations Act. It is also in the larger context of looking at social justice issues. I want to be clear that I do not pretend to be an expert about labour law, but I do think I can contribute something to this discussion around the issue of social justice.

I'd like to begin my presentation by looking at the concentration of wealth. There's a very simple way for us to understand the balance-of-power issues at stake in the Ontario Labour Relations Act proposed amendments. I would like to begin by asking you to imagine that all of Canada's wealth is in this room. This is it. This space has all of our wealth.

One fifth of the population has none of it, not one bit. In fact, it has negative wealth, because its debts exceed assets. That's one fifth of the population. Another fifth of the population has 2% of the wealth, so if you imagine the tiniest slice along this wall, that's another fifth of the population. Yet another fifth of the population has 9% of Canada's wealth. So let's imagine that takes us to this first row of chairs, to your seats.

**Mr Wood:** I'm not rich.

**Ms O'Connor:** You're not in that category either.

The next fifth of the population, the fourth fifth of the population, has 19% of Canada's wealth. Let's say that takes us to a point about here. That means the remaining one fifth of the Canadian population has 68% of all Canada's wealth. One fifth of the population has all the rest of the room.

I don't think we're talking about a delicate balance of power here. I don't think it's delicate at all. And when we have this kind of concentration of wealth, we have a concentration of power as well.

How does that concentration of power display itself? Let's look at what that wealthy one fifth owns. For example, they own the mainstream media. Billionaire Ken Thomson owns one in three daily newspapers in Canada.

If you look at the Thomson and Southam chains together, they control 60% to 70% of all English-Canadian circulation. So we see how a concentration of wealth is fed into a concentration of power.

There's another way in which we can look at this. That wealthy fifth of the population can buy influence. With all due respect to the members here, they are able to make contributions. They are able to buy politicians when they need to.

I want to mention that the concentration of wealth breakdown is not something that I calculated. It's from Statistics Canada, release 13-588.

Under the federal Tory government, in the last eight years the concentration of wealth has been increasing; that is, the already rich are getting richer and everybody else is getting poorer. Corresponding to this is an increasingly undemocratic society. Government actions such as negotiating and signing the free trade deals or introducing the GST have been taken despite clear majority public opposition.

Reckless megadeals, negotiated secretly and presented as unalterable finished products such as the proposed North American free trade agreement, seem to have become standard operating procedure for the Prime Minister. It's now only the rich and multinational corporations that are benefiting from this style of government. Small and medium-sized businesses are being wiped out in record numbers, jobs are being lost by the hundreds of thousands and the quality of remaining jobs is decreasing. Even many members of the business community who initially embraced the free market/free trade ideology are now opposed to it.

One thing I can tell you with absolute assurance is that the majority of people in this country do not like this concentration of wealth, and when they are allowed to understand how the Ontario Labour Relations Act functions to assist in a redistribution of wealth and a rebalance of power, they like it.

People in this country see that a concentration of wealth is undemocratic. They see that it's not a natural product of free market principles and they're angry at being manipulated and pressured by excessive talk of competitiveness and globalization when Canada already has a top-notch workforce and a strong history of international trade. People want to see a strong market, but a market that is put in its place, that's put in some perspective.

Indeed, it seems that ordinary working Canadians are much more willing to confront a complex and challenging future, a changing workplace, than many of the elected officials or leaders in the business community. Political and business leaders are thinking in narrow terms of competitiveness and quick profits, whereas Canadians are thinking in the broadest possible terms about maintaining values, raising standards and engaging in creative social and economic development initiatives that will ensure a decent future for our children.

The existence of strong, politically independent unions is proven to be both a social and an economic good in country after country. Where there are higher levels of unionization, there is more equal distribution of wealth,

more stable democracy, more social support and generally a higher standard of living. There's no question that unions' successes at improving organized workers' lives also positively influence conditions for non-unionized workers. Child labour restrictions, 40-hour workweeks and pension plans are all classic examples of union-led struggles for more humane social conditions.

We need a better balance of wealth and power in Canada. We need checks and balances in our democracy, or we don't have one. Unions, that is, workers uniting for a stronger, more effective, collective voice, are one modest check. Unions are one way of achieving some balance of interest, some measure of democracy, but let's not blow this out of proportion. It's still one fifth of the population holding 68% of the country's wealth. Let's not exaggerate the impact that any amendments to the Ontario Labour Relations Act could have on the power of unions.

The Ontario Coalition for Social Justice regards the proposed amendments to the OLRA as very small steps towards more democracy and economic justice. In the context of the federal free market fiasco in which every effort is being made to drive down wages and working conditions and at the same time unravel Canada's social safety net, these OLRA amendments are no more than modest, hopeful attempts at worker self-preservation.

1540

It is healthy in a democracy to have competing views. It's important for people to understand what the views are and to be able to choose a political agenda that most closely corresponds to their own personal values and concerns. People do want jobs—they're afraid now because of unbelievable job losses caused mainly by Mulroney's made-in-Canada recession—but they want other things too. They want decent wages, good health care and education, a clean environment and a future for all of Canada's children, not just the children of the rich. They want a country that is vital, democratic and definitely distinct from the United States.

The market-takes-all mood of Canadian business, intent on restructuring, cutting labour costs and eliminating unions, is shortsighted and paranoid. It's a mood that parallels the US multinationals in their current continental power grab, but Canadian businesses adopt this mood at their peril, for US businesses do not have any interest in preserving our society. In contrast, Canadian unions, representing working people who see their futures right here in Canada, do have a great interest in preserving our society.

The Ontario Coalition for Social Justice supports the proposed amendments to the Labour Relations Act and specifically urges the proposed changes regarding the purpose clause, the basic right to organize in certain sectors and the prohibitions on the use of replacement workers or scabs. We view the provisions regarding plant closures and worker adjustment as positive but inadequate. We also strongly urge immediate study of broader-based bargaining. Only broader-based bargaining can effectively address the concerns of the most exploited and vulnerable workers in our society, largely concentrated in the service sector, who tend also to be women and people of colour. Again, it's a straightforward matter of social justice.

**The Chair:** Thank you. The Progressive Conservative caucus was scheduled to pose questions to you first. We have over five minutes per caucus.

**Mr Hope:** If they don't carry an interest—

**The Chair:** My apologies. Mr Ward.

**Mr Ward:** I'd like to thank you for your presentation. I'd like to thank the Progressive Conservatives for allowing us to have that much more time to question you. I'm sure this is a question they would want asked. You talked about social and economic justice for working people in Ontario or indeed the country. You can define what that means in later conversations because everyone has his own idea. But to work towards that goal, do you—I recognize you're not a labour expert—believe that the obstacles currently in place under the existing Ontario Labour Relations Act that impede employees in a workplace where the majority consciously wish to have a trade union to represent them should be removed to the greatest degree possible?

**Ms O'Connor:** Yes, I certainly think those obstacles should be removed to the greatest degree possible. The proposed amendments basically just upgrade and update the Ontario Labour Relations Act to address changes in the workplace, to address the fact that now there are many more part-time women workers. I happen to be one, a mother of three and a part-time worker. Everything we can do to reduce obstacles to organizing is movement towards social justice. We need a balance, when we have a situation of such an incredible concentration of wealth and such power that can be marshalled by the corporate sector.

**Mr Ward:** For the benefit of myself and quite possibly the people of Ontario who are watching these proceedings—they may not be familiar with the Ontario Coalition for Social Justice—in looking at some of the member organizations, it appears to be quite a broad base of involvement.

Just to name a few, you have the Anglican Church, the Basic Poverty Action Group, Canadian Artists Representation Ontario, Canadian Pensioners Concerned, Catholic Rural Life, Chiefs of Ontario, Coalition of Visible Minority Women, Communications and Electrical Workers of Canada, one of the finest unions, I think, in our country, and the Council of Canadians—really a broad base of involvement here. Could you tell us, for my benefit and for the benefit of the viewing public, a little bit about your organization and how it came to be?

**Ms O'Connor:** Yes, I'd be happy to. The Ontario Coalition for Social Justice came together originally as a group of organizations concerned about the proposed Canada-US free trade agreement. They worked together to oppose free trade with the United States because they could see that it was a deal cut to be exploitative of most people and to enhance the concentration of wealth. So people resisted free trade.

Once the free trade deal had been signed, the Mulroney government introduced the GST, and the same group of people said, "We'd like to stay together to oppose the GST." Then they began to realize that a whole corporate agenda was being run against this country and that there had to be presented an alternative, a social justice agenda,



so they decided to stay together and rename the Coalition Against Free Trade as the Coalition for Social Justice. People have been working together for some time to understand how the corporate agenda is working and not working.

**Mr Ward:** I think it's very informative to have the information.

**Mr Hayes:** Ms O'Connor, you made a very good presentation. I'm looking at your statement that you made there, the little phrase "Justice and Jobs." We can have both, and I believe this is certainly what this piece of legislation is actually dealing with.

I just wanted to let you know that this government and the minister, Bob Mackenzie, made a statement in the House, and it really relates to your presentation. It says here: "It is not a matter of choosing between jobs and justice. It's all about having both; having the justice of fair, balanced labour legislation that brings greater dialogue to the workplace and, in doing so, making Ontario economically strong."

Then it goes on to talk about Ontario's economy going through a process with the strongest resource in mind, and that's the people of Ontario, and this country for that matter.

Of course there are people who really feel that we seem to have to bring ourselves down to other people in other countries who are exploited by low wages and very poor working conditions and with no benefits. I'm glad to see that you're mentioning here what Canadians truly want, and it's not the same thing that some of these people want for a quick profit, who think the only way we can be competitive is cutting people's wages and benefits. I'm pleased to hear you say that.

I know you have mentioned that you are not an expert on the legislation, but do you feel that this is balancing things a little bit better for workers in this province? There are those who feel we're giving too much advantage to the workers and they have too many advantages now. These are some opinions of people who are opposed to this particular bill.

1550

**Ms O'Connor:** As I said in my presentation, our view is that the proposed amendments to the Ontario Labour Relations Act are small steps towards a more democratic, more just society and more democratic, more just workplaces.

We do not regard them as earth-shattering changes. They are not bringing in Ontario's socialist revolution. They are not making big changes. They are making modest changes that simply address modern conditions, changes in the workplace. So we regard them as steps in the right direction. But, as I mentioned at the end of my statement, we think that looking at broader-based bargaining is essential, again for addressing the changed workplace.

**Mr Offer:** I have a couple of questions. Firstly, on that first page, I get a little concern. I understand maybe where you're coming from, but I get some concern where, in the last four or five lines of the first page, you intimate that opposition to a bill of this kind might be the result of

somebody buying off a politician. Jeez, I think that's just ridiculous.

However, on the second page you talk about politically independent unions. Before I ask the next question, I want to sort of build on Mr Ward's question, because I think it's important to know. I note that you're located at 15 Gervais Drive and, if I'm not mistaken, I think that's the head office of the Ontario Federation of Labour.

**Ms O'Connor:** The Ontario Coalition for Social Justice has had offices at different members' organizations. For a while we were based in one of the churches that is a member, now we're doing time based in one of the labour offices and then we'll be moving again. So we go where there's an open space.

**Mr Offer:** That's fine. I just wanted to know.

On the issue of these politically independent unions, would you support an amendment that would give to every unionized worker in this province the freedom to devote certain dollars to the political party of his choice as opposed to what it is now?

**Ms O'Connor:** This is probably a question that would have to be discussed by members of the coalition. It's not a topic we've discussed, so I don't feel in the position to speak for the coalition.

**Mr Offer:** I would certainly appreciate your maybe discussing that and sending that back to the committee, because you've spoken about your concern about power, and why not give to unionized workers the ability to direct funds to the political party of their choice?

**Ms O'Connor:** Why not give workers the ability to unionize first?

**Mr Offer:** They have that.

**Mr Phillips:** Just to comment on that, I think we're just going by your brief, "politically independent unions." I think for the union movement this is quite a fundamental issue of whether one has ultimately a conflict in representing the broad interests of your members and also being beholden to one political party, because right now and down the road there will be conflicts between what's in the best interests of the members of the union and the direction the government is taking. I very much support your political independence and I just wonder how you would see changing the bill so that unions are assured of being politically independent.

**Ms O'Connor:** I don't see that there any changes necessary to the bill to assure that unions are politically independent. Canada has a history of politically independent unions as opposed to certain other countries. Mexico, for example, is a good case where the unions have been quite tied to one party, unable to act independently. Unions in this country are quite able to act independently.

**Mr Phillips:** I agree with my colleague that I would appreciate the coalition giving us its advice on whatever areas we can help in to ensure the political independence of unions. I hope the group might meet. I think we're going to deal with the bill in early October and any advice you could give us on that could be helpful. I guess you just deal through the clerk with your advice to us.

**Ms O'Connor:** Fine.

**Mr Phillips:** My second question is on the job situation, and I think that's mentioned in your brief.

**Ms O'Connor:** Yes, it is.

**Mr Phillips:** Right now, I don't think we've ever seen the number of unemployed people in Ontario, at least since we've been keeping records. Even going back to 1930, there were not as many unemployed people in Ontario, and all of us hope that will turn around shortly. Two years ago, Ontario had an unemployment rate below 5%. It is now at 11%, and the number of unemployed seems to be rising.

I realize your group is attacking the Tories as much as you can for their high interest rates, although I guess the interest rates are down now, and the high Canadian dollar.

**Ms O'Connor:** For their free trade deals.

**Mr Phillips:** Yes, although the Premier has indicated to us that he sees the future in Ontario being in the manufacturing sector; Ontario getting world mandates for products and being able to compete in a free trade environment. That's how he sees the future. But really my question to the coalition is: What can we be doing here in Ontario to be helpful on the job situation, particularly as it relates to this bill?

**Ms O'Connor:** I think it would be very helpful for this committee and other committees to look at the impact of free trade. I think it would be very helpful for this committee and other committees to think long-term about Canada's future and not to panic about threatened job loss from something like amendments to the Labour Relations Act. If we think about the kind of Canada we want, we will be able to come up with programs that do create both jobs and social justice.

As I mentioned, we have a program, a platform, that we're working on in our "Justice and Jobs" campaign. While we don't claim to have all the answers by any means, we do see that there are a few very simple things that need to be done. Certainly, we can address the question of concentration of wealth through the tax structure. Our tax system currently favours the rich and places an unbelievable burden on the middle class and the poor.

**The Chair:** Thank you. I've distributed the Conservatives' time equally among the Liberals.

**Mr Turnbull:** We have no questions. Thank you.

**The Chair:** Okay. As I've indicated, I've distributed your time equally among the Liberal caucus and the NDP caucus. The Conservative caucus was to have been the first caucus to question you, but they weren't here at that point.

1600

**Mr Hope:** One of the areas I think Mr Ward forgot, because I went on and flipped your sheet over, is whom you're involved with. The National Farmers Union is one of them, the Ontario Federation of Students, the Ontario Secondary School Teachers' Federation and the United Church of Canada. That seems to be a credible source. As a matter of fact, I happen to be an area coordinator for southwestern Ontario, which was why I was appreciating it. You didn't only fearmonger about the projections of wages and the wealth in Canada; you also made refer-

ences, so for that anybody who doesn't believe your calculations, it's there.

One of the areas that I think you really touched on is the matter of social justice. Mr Phillips always likes to be the spokesperson for the government. He has forgotten that he's now the other side. One of the things is that we have no problem with trade, and you've made it very clear in here, but we have a problem when it is taking away from our society. I know you've mentioned free trade, and I remember very clearly the arguments and the fight over free trade. As a matter of fact, there was a fight against the GST. I remember doing a skit called Brian's Christmas Tory and also Canada in Jeopardy, in which we tried to communicate to the general public what is going on.

One of the areas we found out about is that when people talk competitiveness and you ask them for a definition, they always seem to put wages in this issue. Competitiveness, in the eyes of some of the individuals, is around total wages, but most of us understand competitiveness to be around technology and to be able to compete in that marketplace.

At the end you talked about the development of our future and our children. I was wondering, because this legislation is intended to create workplace harmony: In order for us to make sure we're covering both ends of the spectrum, we must think about our youth, developing it, and more labour history so that youth understands the value of the programs we currently enjoy today.

Before I entered this job in the political life, in the factory I always made sure people understood what vacations were all about, because these were not a given; they were something that was fought for. We dealt with seniority and job training programs. We always made sure that people understood so that it wasn't abusive. You know, we were trying to save the company money. We wanted to help it make money for three years, and at the end of the three years we were coming to collect some of it.

I am just wondering about your viewpoints about making sure our education system provides a balance not only to teach us that everybody's going to come out of the school system and be little entrepreneurs, but to understand that some of those are going to become workers.

**Ms O'Connor:** It's interesting that you describe this educating that happens to younger people, because it happens in the coalition context. Senior citizens representing senior organizations always stress how hard they fought to get where we are now, how they fought for medicare, how they fought for these rights to organize. It's so important to them to get the younger members of the coalition, the representatives of the Ontario Federation of Students—many of the peace and environmental activists are younger—to realize that none of this course of history was inevitable. It was struggled for and fought for, and they can't bear to see it taken apart now. They can't bear to see it taken apart with language like "competitiveness." As I described it earlier, I think there's sort of a market-takes-all mentality right now, and that the highest premium is on the fastest profit, without any look at what it really means for society and for the future.



Many member organizations of the coalition worked carefully to connect with other young people to be able to make presentations in schools, to be able to connect with the younger workers so that there is some sense of the history and of the gains people have made by their struggle for medicare, for access to the education system and for decent work conditions.

**The Chair:** Thank you, Ms O'Connor. We appreciate your appearing here today on behalf of the Ontario Coalition for Social Justice. We're grateful for your interest in this legislation and your willingness to participate in this very important process. Take care.

MENNO VORSTER

**The Chair:** The next participant is Mr Vorster. Please seat yourself, sir. We've all got your written submission. Carry on with what you want to tell us, sir.

**Mr Menno Vorster:** I thought I'd be boring for a few minutes and just read the highlights of this, at least, if you'll forgive me. First, I just want to thank you for allowing me to add on to what I'm sure has been a great number, in length and divergence, of views. I will be very brief.

My name is Menno Vorster and for many years I was an activist in the school teachers' federations, both in Toronto and at the provincial level. That, plus a keen interest in community affairs and labour relations, has led me to a more recent career as a self-employed labour consultant. Along with other pursuits, I and my partners at a company called Labour Resource Services spend considerable time as nominees to both rights and interest arbitration boards. It's in that latter capacity and on that specific subject that I wish to concentrate my remarks today.

As you know, subsection 45(2) of the act presently provides that where the parties in a newly certified workplace cannot agree, language will be inserted into the collective agreement to have arbitrations heard before a three-member panel. The change that the government has asked you to consider would alter that to a single arbitrator. I want to raise a couple of points on what I find to be somewhat illogical about this move, if you'll bear with me.

On the whole, it's the less mature bargaining relationships that benefit most from three-person boards. Not only does it provide the most thorough approach for those who have never been involved in a formalized process of dispute resolution, but it obviously also creates an important appearance of objectivity to newly organized workplaces.

As the relationship develops and both parties gain experience in the process, in everything from conducting a hearing to knowing which grievances are worth pursuing, parties generally move towards a more diversified process and use single arbitrators in at least some types of grievances.

Nominees, particularly those who provide the service on a regular basis, can be and are of considerable assistance to the process. Appointees provide feedback to those presenting the cases, especially for those who haven't done it on a frequent basis, and also provide some idea of where to take the case in front of an arbitrator. Their knowledge of a specific workplace can often assist an arbitrator in

zeroing in on the relevant issues and understanding the consequences of collective agreement provisions, which is not always very apparent by the words written in.

In many cases, during the course of a hearing it becomes apparent that an agreed settlement is not only possible but desirable. Nominees can easily facilitate this process and can do it without having the arbitrator lose his neutrality or appearance of neutrality by trying to seek that kind of settlement.

After the completion of the evidence in a case, the sidespersons often put forward the most relevant points to the arbitrator for their respective parties, not just to persuade the arbitrator but also to ensure that all factors have been taken into account. It's kind of like the court of second resort, if you will. Even if their side does not prevail, nominees can in many cases seek changes to the final award that will make the decision more suitable to the needs of either party. Dissents and addenda place an alternative view on the record which can have a lasting impact on the precedent value of an award or the future relations between the parties.

A few years ago, however, the Ontario government felt it was desirable to insert some flexibility into the system and not simply mandate three-person panels without offering the parties an element of choice. As a result, even in workplaces only recently covered by the act, either party can currently exercise its right to have any arbitral matter heard before a sole arbitrator appointed by the minister—that's section 46. Currently, about 60% of arbitrations are heard by single adjudicators.

I would argue that this makes a good deal of sense. Having the entire spectrum of issues heard by a three-person panel is, in some cases, a waste of time and money. On the other hand, requiring that the majority of hearings be before a sole arbitrator takes away the thoroughness that some cases require.

The real problem with the proposed amendment, I believe, is that it would remove the very flexibility the government had previously built in. Whereas either employer or the union can presently choose a single arbitrator if they prefer that to a mandated three-person panel, the suggested change would have both parties appear before a single adjudicator unless both parties agree. The amendment puts into the legislation what the parties are already able to do at the expense of making the other option readily available. As a result, the proposed amendment is far more restrictive than the provision already in place.

1610

It is not as though three-person panels are rare in other jurisdictions in Ontario. A host of other decision-making forums mandate tripartite boards as the norm, including the Workers' Compensation Board, the Ontario Labour Relations Board and the Pay Equity Commission, and it seems ironic that even the Grievance Settlement Board, which deals with arbitrations for all unionized Ontario government employees, only uses three-person boards. I would have expected that if the government had had some fundamental shift in philosophy on this issue, it would have made those changes in its own house first.

The truth, of course, is that this section of the proposed amendment is not a pillar of importance in comparison to the many crucial issues you are debating. There will be few who will take their time before you to elaborate the arguments on this specific provision. It is, none the less, an important consideration for ongoing positive labour relations in the workplace.

Having regard that you have heard many words in the last number of weeks and that you're not likely to base your decision on verbal volume, I'll end my remarks there and trust you will take them into account when you make your decisions.

**The Chair:** Thank you kindly, sir; six minutes.

**Mr Vorster:** Not bad, eh?

**The Chair:** Go ahead, Ms Murdock, and if you leave Mr Owens some time, he might be able to ask a question too.

**Ms Murdock:** Okay, will do. Just a couple of points. Yes, you're right in the last part of what you said: Very few groups have even spoken to this, although a fair number of employer groups have indicated that they're not pleased with the sole-arbitration deeming provision either. So it is interesting that you're coming forward with this.

I'd like to know if your remarks apply to both rights and interest arbitrations. You seem to have focused on the interest arbitration boards rather than—they're both?

**Mr Vorster:** No, actually I focused on the rights. The interest arbitration boards currently are three-person boards and I think they will remain that way. I would be very surprised if anybody opted in any case for a single arbitrator in that situation. It requires so much knowledge of the workplace, and to leave it to a single arbitrator is—I think most arbitrators would back away from that process themselves. So I'm concentrating on rights, basically.

**Ms Murdock:** And on rights, 60% right now, as you're saying, are basically done by sole arbitrators anyway.

**Mr Vorster:** Right. Yes.

**Ms Murdock:** The amendment says a deeming provision of a sole arbitrator, without the option you're suggesting. You're saying that you'd like—and correct me if I'm wrong—a subsection asking for an option choice to the sole arbitrator, or are you asking that it be left the way it is, or are you asking that there be a requirement that if the sole arbitration is left as it is, it then would be a person who has an interest in or a knowledge of that particular workplace?

**Mr Vorster:** A good question, and there's not a simple answer, but let me try to tackle it. What I'm suggesting is that under the current legislation the three-person board is mandated, but if any party wants, they can get out of that by going for single boards. There are options to either side to do both. The way it currently is being proposed is that it's a one-person board, and unless they both agree, it stays that way. In other words, they both have to agree for a three-person board, so the flexibility is out of the system.

Probably my first choice would be to leave it the way it is. If, however, an option is chosen, you could do similar to

a section 46 by saying, "If either party wishes, they can go to a three-person board."

The difficulty with that is that sometimes what you're going to end up with is that one party or another—and you can guess which one—will opt for a three-person board because of the expense involved, and I say that being on the cheap side of the arbitration table, believe me. It does increase the cost, and therefore there's some caution as to when it's used, and people do opt for one-person boards when the case doesn't justify it. But if you put in an option that allows either party to go and choose a three-person board, it may well be that it's used for nuisance value, and I think that's more negative than it currently is.

Currently there hasn't been much complaint about the system, quite frankly. I know you haven't heard a lot about it, but I think that's also because of the depth of the issues you've got before you.

The final option was to—

**Ms Murdock:** That it be a requirement that the sole arbitrator have some knowledge of the workplace which he or she would be arbitrating.

**Mr Vorster:** Who's going to make the determination of which arbitrator has those? That's currently our job as nominees. When we get together and choose an arbitrator, we obviously choose one who has some understanding of it, but if it's left to sort of a bureaucratic umbrella to do it, what you will end up with is designated panels of arbitration experts in various fields.

It's going to make it difficult for anybody to break into an arbitration field or to become an arbitrator and it also doesn't necessarily—somebody has to make the judgement and I know there are people on the employer's side who may judge that one arbitrator has a great deal of knowledge, where on the union side, "Over my dead body." I'm sure they have the same feeling of arbitrators vice versa, so expertise isn't necessarily the only requirement.

Under the current system, section 46, you do take that chance. If you opt for a single arbitrator, you're in some cases playing Russian roulette because you don't know who you're going to end up with. But neither the employer nor the union wants that to happen, so when either party opts for a section 46, very often at the same time it will agree to mutually choose an arbitrator so there isn't the threat of going to the list and ending up with someone who may know nothing about it.

**Mr Hope:** When you're focusing around the area of new collective agreements, and I've had a number of experiences around new collective agreements, one of the problems has always been that we get some of the lawyers who represent the companies not being involved in the workplaces. When we have representatives from the workplace speaking on behalf of their membership, one of the problems that I see is if we can get down to basics in having the companies reflect exactly what's going on in their workplace, to negotiate with the workers' representatives who are from the factory, instead of negotiating against one of their lawyers—and I can name a number of them—I think you would alleviate the whole problem of trying to get arbitration. With single arbitrators versus a panel, there are



goods and there are bads and I'm not going to be an expert in that because my major goal has always been to try to negotiate the collective agreement versus going to an arbitrator to have somebody do that.

**The Chair:** Mr Vorster may want to respond.

**Mr Vorster:** I agree. I think the process has become one of experts rather than people who were actually working in the workplace and that's unfortunate. It's ironic that you suggest, or it's interesting that you suggest, your basic purpose has always been to negotiate and to settle, and that's exactly mine. I can tell you, as a nominee in about half of the cases that I sit on, the first thing we try to do if it's at all possible, if there's a window, is to settle it.

For example, yesterday I was on a case where a person had a suspension for three days. It's hard for an arbitrator to go in and try to negotiate a settlement in the middle of all of that. But as a nominee, the answer is obvious: If the person has some guilt in why he was suspended in the first place—in this case he did—you make it a day and he gets two days' pay back. The suspension stands for a day, the employer's happy and the employee is relatively happy because he doesn't have to take the chance in front of the arbitration board. But a single arbitrator simply can't do that.

Interjection.

**Mr Vorster:** Yes, well, we're not all of that ilk.

**Mr Offer:** Thank you for your presentation. I think the matter you raise has been brought forward throughout the hearings, but I don't know that there's been a presentation which has just zeroed in fully on the issue of arbitrator.

I'd like to get your thoughts on the expedited hearing as contained in Bill 40. It's my understanding that also would be heard before a single arbitrator. Now, there are some concerns that it maybe should be potentially a three-person board, unless both parties agree to go to one. I'd like to get your thoughts on whether the expedited hearing would be in jeopardy if there were a three-person arbitration board.

**Mr Vorster:** Part of the difficulty of all of this—and the current system I think is built for that—is that there is a whole variety of grievances. There are some which are relatively simple—well, let me put it this way. There are currently a whole array of systems used.

I know that one union and employer use a system whereby they rotate a panel of arbitrators who will hear six cases a day and six cases are arbitrarily appointed for that day. The point is, they can't hear six, so what they do is settle three and start one, but it's intended to speed up the process. If it's another option, an expedited process, I don't think there's anything wrong with that. There are grievances that will fit that process and should be used.

1620

But the current system has been built and has over time expanded because the need was there. What I'm afraid of is that this proposal in front of you now is going to take what has been a natural expansion and shrink it back by taking some of the options away. To answer specifically your question, I don't know if a tripartite board in section 40 would slow it up. I don't think it's necessary in all cases, quite frankly.

**Mr Offer:** What you're saying is there's a certain flexibility that now exists in the act which has evolved and is working. Why should one try to shrink it back into something which takes away the flexibility?

**Mr Vorster:** If there was a philosophical shift towards a single arbitrator, then the change should be that the single arbitrator becomes the norm, with the option built in. The problem is that's not the case at the moment. It's been done so that it's very difficult to get to a three-person board. For those 40% of cases where a three-person board counts, you may not be able to get there, whereas you currently can, and for the 60%, you can get there now anyway.

**Mr Phillips:** I really do appreciate your thought on that. I frankly don't have a firm opinion on that. What I hear from you makes sense, and I think I would ask the parliamentary assistant to seriously consider your comments. Maybe there's a reason we haven't yet heard on why it's drafted the way it's drafted. It may be simpler in total, somewhat cheaper.

**Mr Vorster:** Do you want to see my fee schedule? Not that much cheaper.

**Mr Phillips:** Your point of view on it is valid, I think, and that is that oftentimes, particularly in a new situation, both parties would like to feel comfortable that there is someone there who tends to take their point of view more into account perhaps than if it were just a single panel, so there may be some good reasons why it's drafted the way it is. At some stage, we'll have a chance to debate those, I guess.

**Mr Vorster:** If I could just add one comment, it's interesting that out of the clients I've got, I don't think there's one that uses three-person boards alone. Some of them have it mandated both ways in their collective agreement. The only ones that use three-person boards by choice, because they obviously have the other choice, are newly organized workplaces. The reason for that is that at some point they may not know what they're doing and they don't have the case background for the particular types of grievances, and that's where we come in.

**Mr Phillips:** Just one last question on the purpose clause. I know it's not in your brief, but have you examined the purpose clause? In your opinion, dealing with the board, does it provide new directions for how the board would operate?

**Mr Vorster:** You mean in the overall redone structure?

**Mr Phillips:** Of the labour relations board.

**Mr Vorster:** I'm certainly no expert on that one, but I would think so, yes.

**Mr Phillips:** It embarks it on some new directions.

**Mr Vorster:** I think it embarks it on some directions that are looked upon to speed the process up and to make it tighter, yes.

**Mr Turnbull:** You certainly raised some very interesting points. It is a thoughtful brief. It makes a lot of sense. I want to contemplate what the implications are, but I can see that both sides can run into risks in terms of the balance that a sole arbitrator could bring to this. I'm certainly

going to refer it to our research staff and consider it further. I would like the parliamentary assistant to come forward at some point with some discussion as to why they went this route.

On the arbitration aspect, I would like you just to comment. The concern I have is maintaining jobs in this province. With the first-contract compulsory arbitration after 30 days—and I understand that you and I have to have different political viewpoints, but nevertheless I would like to draw out your view—do you not feel it would be appropriate that the arbitration for the first contract should be compelled to take into account the ability of the employer to be able to pay any first contract?

What I'm saying to you is I'm concerned that it's all very well workers getting a big increase in pay, but if the job isn't there for them in six months' time, it really hasn't served the workers very well. Do you not feel that it might be appropriate to compel the arbitrators to consider the fiscal situation of the company in arriving at that first arbitration?

**Mr Wood:** You missed the previous presentation, David.

**Mr Turnbull:** I didn't want to—

**Mr Vorster:** There's a wealth of jurisprudence on the ability-to-pay argument. The fact is that even under Bill 11, I think it was, some time ago, which was the wage restraint process, even then it didn't work.

I've sat on a whole number of first-contract arbitrations and I can assure you that the kinds of increases you would fear, I guess, under such a process simply don't occur. Even if workers are well behind their counterparts in unionized or previously unionized workplaces, I'm aware of no arbitration situation which in a first contract has done a catch-up to where their counterparts are that have been previously unionized.

There may be a trend to increasing that, but inherently there's an understanding. If the industry is in trouble, even though they may not accept the brief financial statements that are presented in an ability-to-pay argument, inherently there is an understanding that you're not going to try to break the employer by putting forward increases that they simply don't have the ability to pay. There's inherently an understanding of that, and arbitrators are pretty responsible in that fashion. Certainly, the employer nominees take that route traditionally and make very thorough arguments on why certain things can't be put into a first contract simply because of the expense.

I don't want to be vague on your answer but I don't think it's as fearful as you think. The process is already under way and, quite frankly, I think it's worked rather well and none of those excessive kinds of awards have been made, certainly not the ones I've sat on, although I've pushed for them, I suppose.

**The Chair:** I want to express the committee's thanks to you, Mr Vorster, for wanting to participate in this process. You've played a valuable role, you've raised an important issue and obviously you may well have rattled enough cages that there'll be a response of some sort. Thank you kindly. I appreciate that.

**Mr Offer:** Mr Chair, I have a motion which I would ask the clerk to distribute at this time, and I would move it and discuss it:

Whereas in the city of Thunder Bay there were 43 requests to be heard and the committee could accommodate only 11 witnesses; and

Whereas in the city of Windsor there were 56 requests to be heard and the committee could accommodate only 15 witnesses; and

Whereas in the city of London there were 116 requests to be heard and the committee could accommodate only 19 witnesses; and

Whereas in the city of Sudbury there were 39 requests to be heard and the committee could accommodate only 11 witnesses; and

Whereas in the city of Ottawa there were 78 requests to be heard and the committee could accommodate only 20 witnesses; and

Whereas in the city of Kingston there were 45 requests to be heard and the committee could accommodate only 15 witnesses,

I move that this committee request the House leaders to amend the motion moved by Mr Cooke on July 14 indicating the dates and times of sittings for the purpose of public hearings on Bill 40 in order to allow two additional weeks for the purpose of public hearings throughout the province.

**The Chair:** Do you want to speak to that?

**Mr Offer:** Yes. I recognize the interest by many groups and associations across the province to take part in these hearings. I think, Mr Chair, you and the clerk have attempted to accommodate as best you can those who wish to be heard. However, there is no question that there are still many hundreds of groups and associations representing thousands, if not hundreds of thousands, of people who want to come before this committee to express their position for or against concerns about this particular legislation.

I think we in this committee all know that as we move towards the end of the five-week allocation that has been granted this committee, every day we hear a new point, a new thought, a new concern about this legislation. I am concerned and I make this motion. This committee will embark on clause-by-clause without having the opportunity of hearing from many more people who, I believe, have some very important and thoughtful comments on this legislation. This is an opportunity to request the House leaders to give us the authority to go through the province and listen to so many people who wish to be heard.

1630

**Mr Wood:** I'm going to speak against this motion. It's quite obvious there were a lot of requests. A lot of people phoned in to the clerk's office; there's no doubt about that. But there were a lot of presentations that came from the same international union or the same unions or chambers of commerce. A number of them picked up on each other and started making individual presentations.

I don't see any point in dragging this out for another two weeks when it's quite obvious there is an enormous



amount of support out there in the community from working men and women and visible minorities that the modest and minor changes being brought forward in this Bill 40 should be brought into law as quickly as possible; of course, after the amendments have been dealt with over a two-week period.

Even from the presentations we've heard today, we've seen that there is a lot of support for the amendments that have been brought forward, to get them into law as quickly as possible. I don't see taking it to the House leaders to extend the hearings.

**The Chair:** Thank you. We're going to recess for 60 seconds so a technical matter can be taken care of. People, please stay in your seats.

That was a fast minute. That was a resources development committee minute.

**Mr Turnbull:** The Progressive Conservative Party wholeheartedly endorses this motion. It's most important, when we consider this legislation, when the overwhelming amount of evidence has come in that this bill is going to harm the province and reduce the number of jobs that are available at a time when we're in desperate straits, that we should fully hear the concerns of those people who feel it will drive work out of the province. So we fully support this.

I'd like to see longer than two weeks, but I understand the government is determined to move ahead with this. I don't think an extra two weeks are going to dent its timetable unduly when we're thinking of hundreds and hundreds of people who cannot be heard.

I would urge the government members to think about voting in favour of this. I see Mr Wood is nodding his head no. Well, Mr Wood, this is pretty serious and your party will be held responsible for the damage this bill is going to cause the province. So, once again, think about supporting it. We're asking for two extra weeks. The people of Ontario want it and it's only reasonable.

**Mr Phillips:** Mr Chairman, first, I'd say that I think you personally have done a good job in balancing the witnesses. I have no hesitation in saying that in the time that's been given to you, you've done a fine job.

I don't think we could have a more cogent argument for the motion than the last witness, Mr Vorster, who knows this area well. He brought us a new perspective. He's expert in it, an ex-NDP candidate and a fine individual. Fortunately, we were able to hear from him and he brought us some new information.

Even though we've heard from many of the union leadership, I think Mr Upshaw brought us a new perspective today. So even though we've heard from various—

**Mr Wood:** You walk out of the room every time there's a—

**Mr Phillips:** No, I'm anxious to hear from everyone who has a variety of opinions, and while I may not agree with the message of Mr Upshaw, I agree very much with his right to be heard, and similarly the Ontario Coalition for Social Justice today. I think they had a good suggestion in trying to find ways to ensure that the union movement is

free from political interference and not attached to any political movement.

I just use those three examples, from this afternoon, of new thoughts and new recommendations, and I think I can almost guarantee there are similar people, who won't be heard, out there.

I think many of us took at face value the government's commitment in its speech from the throne two years ago that it's going to be open and accessible, that it's going to ensure that every voice is heard in the province and that the doors it said may have been closed before, aren't closed.

I would hate to see you, Mr Chairman, unfairly accused—and it would have been unfair—of closing doors. So to be helpful to you and to the committee, on what is, I think, a fairly modest proposal by my colleague—just two additional weeks—we can certainly work them in. It doesn't affect the timetable and it would tend to take a little pressure off your having to play a sort of single arbiter in who comes before us. I think we could hear from additional people. It would be helpful to us.

**Mr Hope:** It's my pleasure to speak on this as a member of the committee. I hear what Mr Offer's saying about giving the people of Thunder Bay, Windsor, London, Sudbury, Ottawa and Kingston the ability to come forward and speak before the committee. But there's the more positive aspect of making sure these individuals are heard, and that's to the local members and giving them the ability. I'm sure they'll carry their concerns into their respective caucuses to make sure those concerns are heard.

I find it very ironic, though, that the Tory Party comes before us today and says it supports more time, when it's very selective in its hearings process as to which individuals coming before this committee it would like to sit and listen to and those it has no comments on. I only reflect on just two days, yesterday and today. In one of the areas that I talked about, the Ontario Coalition for Social Justice, they didn't even have the ability—I asked a question of the Conservative Party and—

**Mr Turnbull:** Mr Chairman, I have to object.

**Mr Hope:** It really bothers me that we're getting very selective.

I've also reflected, while this motion is being put forward, about some of the presentations that have come before this committee where they've made generic comments: "Oh, it's just a public exercise. What's the sense? I'm here, but you're not even going to listen anyway."

I firmly believe that what we have to do is to make sure that the confrontation that has been created by billboard campaigns, by the media publicity that has been going on and that has been presented before this committee—I feel it's very important, if there are concerns of those respective constituents out there that must be reflected, for this committee to move. I firmly believe in their going before their member and projecting those viewpoints. I just say, about making us go on longer, that I can't support it because I think we have to get on with the business of the day and make sure we move.

**Mr Turnbull:** I unfortunately have to spend some time refuting such an obviously stupid comment. The fact

is that the Progressive Conservative Party has two members on this committee, and at this very moment Mrs Wither is away meeting with people on this very bill. We, with 20 members of our caucus, are stretched a lot more thinly than any other party. I have seen, at times, with six members of the NDP, two of its members sitting at the other side, so the suggestion that we're not interested in listening to presentations is patently untrue. It does this committee a disservice to have that kind of silly comment, which only serves to get bad feeling among the members. It doesn't do justice to your party.

1640

**Mr Huget:** I think it's important to understand that this bill has been through a very long consultative process, in terms of the pre-draft legislation, where there were significant consultation sessions held right across the province and there was an opportunity to hear in those sessions from 350 groups that have an interest in this type of legislation, as well as to receive 447 written submissions at that time.

There's now the full schedule of five weeks of hearings with the corresponding written submissions. I think it should be obvious to anyone that this bill is receiving one of the most, if not the most, extensive consultations in the province's history on a provincial piece of legislation.

It's important to understand as well that there is a physical impossibility to accommodate every single individual in the province who may wish to appear. We would be in hearings for many, many years.

I would just add that in our view the process of consultation, and indeed the opportunity for input from interest groups, no matter from what sector, has been extensive.

**The Chair:** Mr Offer, or rather, before you speak, did Mr Phillips want to comment?

**Mr Phillips:** Just that I think, in fairness to people who want to present, rather than saying, "You go to your local member," this committee is charged by the Legislative Assembly with trying to ensure that people have an opportunity to present to representatives of all parties to have a chance for all of us to hear their thoughts. I'm not sure I want the union leadership's views to have to be filtered through some other member. I want to hear that directly. So I think the argument, "Tell them to go to their local member," will end up being unfair to the witnesses. As I say, I think the labour movement wants access directly to the legislative committee.

In comment to another member about this having taken a long time, I, as a member of the opposition, did not see this bill until the middle of June, barely less than two months ago. I guess it was about two months ago. I've never seen a bill proceed at this speed in the Legislature. I don't think we've ever had as major a bill that's been introduced in June and passed in October, as we have. For the sake of another two weeks, it's not going to even delay the bill, because we've got the two weeks' time. I would think the government members may want to reflect a little bit and just see if we can't hear from some additional witnesses.

**Mr Hayes:** Actually, I really agree with what Mr Wood was saying. I think what's happened here is that there were

different groups of people or coalitions one way or the other where those coalitions came and then as a result of that there were others that belong to those coalitions and came to make independent briefs or presentations.

I'm just wondering long the opposition really wants to drag this thing out, because Mr Offer's saying—just rough calculations—that there were something like 286 people who weren't able to make presentations who wanted to. If he wants to go for another two weeks, of course, he's talking of approximately, what, 16 presentations a day, and that leaves you another 158. Do we not want to hear those people?

How long do you want to go on this thing and how many angles do you want to use to try to delay this legislation that's been overdue for over 30 years in this province? I'm getting a little bit sick and tired of people who are coming out and trying to exploit workers in this province and trying to keep them from getting decent legislation that is long overdue. We've got to start working together here with management and labour on behalf of the workers of this province, and your tactics are just trying to put roadblocks in front of this legislation. I think we've discussed it very thoroughly and I think there's been lots of input and lots of consultation, more than any other legislation previous governments ever tried to pass in this province, so I'm opposed to this resolution.

**Mr Offer:** I remember just a couple of days ago I made a motion on another matter which I was quite pleased the committee did accept. I understand that it's now in the works and I appreciate the letter the Chair wrote to the House leader and copied.

I also remember on that motion that the parliamentary assistant asked for just a little bit of time to think about that. For me, it was right and proper to give that time to the parliamentary assistant and to the members of the government to reflect on that motion and the reasons it was made, and maybe they would like time to reflect on this motion in light of the very important presentations and points that we have heard on this bill. I'm not just saying people against the bill, but people in favour of the bill.

I think it's our responsibility in this committee. The Chair has, I think, very ably attempted to hear from as many people as possible. There are a great many people who want to be heard who just haven't been able to be heard and we're hearing new points every single day. I would ask the government members, through the Chair, if that's permissible, whether they would like some time to reflect on the need for further consultation on this bill.

**The Chair:** Are you waiting for a response from them or are you suggesting deferral?

**Mr Offer:** I would certainly ask for deferral, let us say till tomorrow at noon.

**The Chair:** As far as I'm concerned, that's what's happened, then. The matter is deferred till the end of the morning session tomorrow. Thank you kindly.

We are recessed until 6:30 tonight.

The committee recessed at 1647.



## EVENING SITTING

The committee resumed at 1830.

CHINESE WORKERS' ASSOCIATION OF  
METROPOLITAN TORONTO

**The Chair:** The first participants this evening, and I say welcome to all of you, are the Chinese Workers' Association of Metropolitan Toronto. We've got your written submission which will be made an exhibit and form part of the record. Please give us your comments now. As well, please try to save the last 15 minutes at least for discussions and questions. Go ahead, sir, tell us your name and title, if any.

**Mr Donald Ming:** My name is Donald Ming. I am president of Local 2820 of the United Steelworkers of America, chairperson of the Chinese Workers' Association of Metropolitan Toronto, chairperson of the Chinese advisory committee of the New Democratic Party and a member of both the United Steelworkers of America District 6 human rights committee and the human rights committee of the Labour Council of Metropolitan Toronto and York Region. I am here today to address you on behalf of the Chinese Workers' Association of Metropolitan Toronto.

I was born and raised in Burma and came to Canada in 1976. I began working in Toronto at a non-unionized plant with a workforce that was predominantly Chinese and Filipino. My experience with a non-unionized shop led me in 1981 to become an inside organizer for the United Steelworkers of America. I was directly involved in the organizing campaign and the ultimate certification of my workplace.

Through my involvement in the organizing campaign, I learned at first hand of the effects of employer threats and intimidation. During the campaign we were also faced with an anti-union petition for which we believed we had sufficient evidence of management involvement, but which was not numerically relevant and was therefore never litigated before the board.

Upon certification, I was elected to the position of plant chairperson of Local 2820 and remained in that position until 1987, when I was elected to the position of president of my local. The local was a composite local consisting of 10 bargaining units which ranged from office furniture manufacturing to steel parts manufacturing to auto parts manufacturing and photo-finishing.

As an advocate for Chinese workers in Metropolitan Toronto, a union organizer, contract negotiator and union spokesperson, I have come to understand the limitations of the present Ontario Labour Relations Act and why the act must be changed. Bill 40 is an attempt to make long-overdue improvements to labour legislation in this province, and I believe the bill will improve the climate of labour relations and the working life of employees.

While we support Bill 40, we do not believe it answers every problem, nor does it address the needs of many of the immigrant workers. In this respect, we would like the bill to go much further. There are a number of areas where we believe the bill is deficient and where the needs of immigrant workers have gone unaddressed.

I do not intend to review with you all of the bill's deficiencies, nor will I take you through the bill on a clause-by-clause basis. In my remarks today I want to focus on a few of the reforms included in Bill 40 which will make a real difference for immigrant workers and I will also speak on the failure of the bill to address the issue of broader-based bargaining.

I would first like to take a moment on the issue of broader-based bargaining because we believe it is a major deficiency of Bill 40. The Chinese Workers' Association of Metropolitan Toronto, while it endorsed the proposed amendments in the bill regarding the configuration of bargaining units, believes that the amendments simply do not go far enough.

To understand the necessity for broader-based bargaining, you must appreciate that in industries which do not conform to single plant structures, it is virtually impossible for workers to join together and speak with a single voice through a union. As a result, sectors of our labour market that are the most vulnerable and most marginalized, visible minorities and women, will not gain real benefits from Bill 40.

The Chinese Workers' Association urges the government to establish a task force on broader-based bargaining. This task force must have a mandate to thoroughly examine the issue of broader-based bargaining structures, including a review of sectoral employment standards options so that the vehicle of collective bargaining can bring more workplace involvement for those now excluded. The task force should be comprised of representatives of those groups which have been historically excluded from the benefits of unionization.

A refusal to contemplate broader-based bargaining results ignores the critical problem faced by the sectors of our labour market that are the weakest and most marginalized. We therefore urge the government to establish a task force which is open to new ideas and which recognizes the crucial importance of visible minority employees, women, employees with disabilities and others excluded from the mainstream of collective bargaining.

I will now highlight specific aspects of the bill which are important to immigrant workers in Ontario.

1. Termination of inside organizers: I have learned at first hand through my own experience as a union organizer the devastating effect an employer's threats and intimidation can have on a union organizing drive. This problem is more pronounced in smaller workplaces where employees have daily contact with management and owners of the company. Workers new to Canada who may come from authoritarian regimes may also be more vulnerable to threats and intimidation from their employers. In this context, the best way to defeat the union organizing campaign is to fire the inside organizer.

Presently, there is very little downside to an employer who fires a union organizer. Even where the inside organizer is eventually reinstated through an order of the board, the employer has in most cases succeeded in defeating the

union's organizing campaign and intimidating the workers into a fearful silence. In the end, the cost in the way of damages for unpaid wages to the inside organizer is viewed by these employers as just another business expense.

Bill 40 attempts to address the problem of the discharged organizer by providing an expedited hearing at the Ontario Labour Relations Board where an employee has been disciplined, discharged or otherwise penalized during a trade union's organizing activities. The new law will require that the board begin to hear the matter within 15 days and requires that the hearing proceed from Monday to Thursday until the matter is concluded. In addition, the board will have to give its decision very quickly, with reasons to follow, if either party requests them.

The Chinese Workers' Association of Metropolitan Toronto believes the protection of the inside organizer is essential if the right to organize is to be provided to the presently unorganized sectors of the workforce. In addition, we support the amendments in the bill which prohibit post-certification petitions and which eliminate the requirement of the dollar membership fee.

2. Provisions respecting part-time employees: The provisions in the bill which address the issue of part-time employees are of particular importance to visible minorities and to women, as these groups make up a large portion of the part-time workforce. It is well documented that part-time workers in Ontario have poorer terms and conditions of employment than regular full-time employees.

The provision in the bill which provides for the consolidation of different bargaining units of the same employer represented by the same union addresses the issue of fragmentation of bargaining units and will assist the historically disadvantaged part-time bargaining unit. In addition, the certification of bargaining units composed of full-time and part-time employees assists in addressing the inequities faced by part-time employees when forced to bargain separately.

The Chinese Workers' Association of Metropolitan Toronto, while it believes the provisions respecting part-time workers do not go far enough, supports the provisions in the bill which are designed to alleviate some of the problems of the part-time bargaining unit.

3. First agreement arbitration: At the end of the union organizing drive and the certification procedure at the board, a certified workplace must now address, for the first time, the realities of collective agreement negotiation. At the negotiating table you have two parties who are relatively new to the realm of contract negotiations, and the reality in which they now operate may be tainted by their experience in the certification process. I think it is fair to say that the negotiation of the first collective agreement often sets the tone for ongoing and future dealings between the parties.

1840

First-agreement collective bargaining is precarious and fragile and often the parties require the presence of, or at least the threat of the presence of, a third-party arbitrator to come to terms with the reality that they are engaged in a new way of determining workplace practices, rules and terms for employment. Bill 40 eliminates the expensive

and wasteful litigation that has been occurring at the board since the first-agreement arbitration access provisions were enacted. No longer will it be essential for a party to prove wrongdoing before being granted access to first-agreement arbitration. Instead, Bill 40 will make it possible for parties who are unable to resolve issues in the context of collective bargaining for a first agreement to have matters resolved at interest arbitration.

4. Arbitrators' powers expanded to consider relevant human rights and other employment-related statutes: Being a member of a visible minority, I can tell you from firsthand experience how important it is to have a workplace free of discrimination and harassment. I am therefore pleased to see the codification of expanded powers of the arbitrator to interpret and apply the requirements of the Human Rights Code and other employment-related statutes, despite any conflict between those requirements and the terms of the collective agreement. The Chinese Workers' Association of Metropolitan Toronto believes that arbitrators should have statutory approval for interpreting and applying all employment-related statutes, including the Human Rights Code, and supports this amendment to the act.

The Chinese Workers' Association of Metropolitan Toronto supports Bill 40. We think this committee should support the bill as well. As you know, the non-unionized workforce looks to the minimum standards set forth in the Employment Standards Act, where not only are the existing standards low, but the legislation is full of exceptions and exemptions. The well-documented lack of enforcement under this legislation reveals that the only real solution to empowering workers is to provide a realistic avenue to becoming unionized. We believe Bill 40 is a step in the right direction.

**The Chair:** Thank you, sir. We have five minutes per caucus.

**Mr Offer:** Thank you for your presentation. I'd like to ask a couple of questions with respect to your experience as an organizer. Could you share with this committee your thoughts as to whether in an organizing drive any expression of opinion by the employer would always be viewed in some way by the employees as a threat, no matter how it's done?

**Mr Ming:** Yes. I can say from my firsthand experience as an inside organizer, and as well I've been working with a couple of organizers in the Chinese community, that the threat during the organizing drive, the intimidation, is the main barrier for employees to stress.

**Mr Offer:** There are a number of questions I want to ask. I think this is a very important presentation. I thank you for that response.

I'm in agreement with you that where there's an organizing drive, I do not believe that employees should be under any threat, coercion or intimidation. This would not be from your own experience, but from your own thoughts: Is there ever a possibility where in an organizing drive, and it wouldn't be yours but in any organizing drive, the union organizers may unwittingly, in the way they operate, in their actions, be viewed by the employees as using some sort of coercion or intimidation?



**Mr Ming:** From the union organizers, I don't see this.

**Mr Phillips:** I appreciate the presentation too, Mr Ming. My question is on your point on the final page, which is an important one for me, and that's the implication that the Employment Standards Act is not being enforced and therefore the only course of action is for people to unionize. That's, in my opinion, wrong. If we've got the standards act, that should be enforced.

Have you, in your experience in the community, seen an increase in the enforcement of the Employment Standards Act recently, and therefore is this something that's going to correct itself, so that we are imposing the wrong solution here, the solution being trying to do it all through encouraging people to become part of a union, when the real solution might be a strong enforcement of the Employment Standards Act?

**Mr Ming:** As to the Employment Standards Act itself and the lack of enforcement, particularly in Chinese workplaces where Chinese workers predominate, such as in the garment industry and in the restaurant industry, we feel very strongly about the workers' lack of knowledge about their rights, and in some cases not only the workers but the employers themselves have, it seems, a lack of knowledge to provide the kinds of standards provided under the Employment Standards Act to the workers.

In the Chinese community several years ago, there was a study done among the restaurant workers. We have conducted that research; it was done by the University Settlement House. Since then the concern has been raised to the Chinese community, to the Chinese business groups and to the Minister of Labour. That issue, to me, hasn't improved today, even though some of the organizations have done some work. But the fundamental problem is that the workers still have no access to what they should do. Despite knowing what to do, they don't even know what they're entitled to.

Even in some cases where the workers feel their rights have been violated or they realize they should have certain rights, in the workplaces in the Chinese community, for the workers to stand up, to call the Ministry of Labour or call in the inspector for health and safety purposes or for workers' compensation purposes, is still a problem for the workers. They have been really intimidated by the employer. That's why we feel the only solution is to join a union and have someone to represent them, to educate them. That's the only way.

**Mr Turnbull:** Thank you very much for your presentation. I too am concerned when you suggest there's intimidation going on to your workers. You reflected on the fact that you're an immigrant from Burma. I too immigrated to Canada many years ago, and I'm sure you share my view that Canada has a great reputation for democracy and freedom.

I would suggest, first of all, that perhaps the greatest problem the workers you're referring to have is not with the existing laws, but as you have suggested, with their lack of knowledge of these laws, from the point of view of both the workers and the employers. That is a problem that is not going to be solved by this bill, I would put to you.

In that same vein, talking about democracy and freedom, which Canada has undoubtedly the best reputation in the world for, do you not think it's reasonable that workers should have the right to say no, that they don't want to join a union?

**1850**

**Mr Ming:** Absolutely. The workers have the right to choose whether they want to join a union or not. That's a basic fundamental right of workers. On the other hand, when we talk about democracy, we're talking about workers being able to have some control of their own life in the workplace. The only solution is to have some control or some say in the workplace. They invest their lives in a workplace. They are entitled, they have the right to participate in the workplace—

**Mr Turnbull:** They have that right today, Mr Ming.

**Mr Ming:** —which in return permits them to make a living and also to provide them a healthy environment and working conditions. The only solution is to participate through the democratic system.

**Mr Turnbull:** I understand that, Mr Ming. They have that right today without Bill 40. I must emphasize that. But within the right to decide not to join a union, this bill has a clause that even if many of the workers wish to work, they will be prohibited from going to work under this bill. That to me seems to fly in the face of the concept of freedom and democracy.

**Mr Ming:** I don't see that the majority of workers will be forced to do something against their will, if it has gone through the democratic system by majority rule, if the majority has decided to change or to make any deal with the employer.

**Mr Turnbull:** It's very seldom that you get that many people out to cast votes in a union vote, once they're unionized, as to whether they want to work. Very often workers object to the fact that their union is going out, but they reluctantly accept it; it's just one of those things and they feel under pressure from the union to stay out. Under this law they will not be allowed to work, even if they vehemently disagree with the union's position and they're not a member of that union.

**Mr Ming:** I don't feel that has been the case in my organization, in my local particularly.

**Mr Turnbull:** I'm not saying your organization, Mr Ming.

**Mr Ming:** Since we were certified, up to date we had only one collective agreement settled through a strike, which only took four hours because of the solid support from the members.

**Mr Turnbull:** Good.

**Mr Ming:** We always try to negotiate in good faith. The problem is if you can build a good relationship with your employer through the union to show that you care about the business, that you care about your workers, try to build a bridge between the employer and the employee to address the problem. Actually, we are helping the employer to solve a lot of problems in dealing with—so in my case, that's not the problem.

**Mr Turnbull:** Mr Ming, I have no problem with what you're saying. My problem is generally with Bill 40 and its broader implications. I have a great deal of sympathy if in fact you find that there's intimidation going on to your workers, who may not have as good a command of the language as maybe other people have, and I suspect there's great merit in what you have to say. The fact remains, though, that the application of this bill on a broader scale will mean that people who wish to work, who do not wish to be members of a union, will be forced to stay out if a strike is called. I suggest to you that smacks of being a very undemocratic move by this government. That is my concern and I'd like you to respond to that.

**Mr Ming:** I understand your concern. You are referring to the broader based bargaining strategy, right? I assume you are.

**Mr Turnbull:** I'm referring to any company where a strike vote is taken but a majority of the people don't want to be out on strike.

**Mr Ming:** Well, that's a strike vote, and we'll go by majority rule.

**Mr Turnbull:** No. You recall you agreed at the beginning of my questions that it's reasonable if somebody says he doesn't want to be a member of the union. If you've got a whole group of people who don't want to be members of the union, but they're coerced into becoming members of the union as a condition of working at this workplace because it's been organized, and they don't want to strike, I'm saying it seems very undemocratic that people who freely and willingly want to work should be disallowed to work under the terms of this law.

**Mr Ming:** I don't agree with that concept, because the democratic system in this country, whether it's a government or a union, is the same way. The majority of the workforce joins a union, becomes unionized and bargains collectively by elected representatives of the workers on behalf of them, and everybody pays union dues. They are protected by the binding contract and they will be served by the contract, the collective agreement, whether they like the union or not.

If they got dismissed or if they got wrongful dismissal or they were disciplined, the union has to be there. It has the obligation to serve them as a governing body, the same way as the government has. We elected a government. We voted for the government. I don't like this government. The majority voted for this government. They charge GST. I don't want to pay it but I still have to pay.

**The Chair:** Mr Wood, you've already given Mr Turnbull two minutes of your time and I think he's exhausted your generosity. Go ahead.

**Mr Wood:** Thank you very much, Mr Ming, for coming forward. I noticed with interest the last line of your presentation, "We believe Bill 40 is a step in the right direction." Although I've listened through your presentation, you're saying there should be other changes made in the years to come or whatever, but it's a step in the right direction compared to what we've presently had to live with under the two previous governments.

I notice in your presentation that you said you started in the non-union workforce. My first question would be, did you have a certification vote? How long did it take to get to that vote when you got organized?

**Mr Ming:** In my local? No, we got this out of automatic certification.

**Mr Wood:** Just for my information, Mr Turnbull was asking you a number of questions on democracy and majority: I understand when a company makes the last offer, if it's taken to the membership to vote on it, 50% plus one would ratify a contract. Is that correct? If you're out on strike, you need more than 50% of the membership to accept a last offer to go back to work.

**Mr Ming:** Yes.

**Mr Wood:** That's very similar to politics. In Ontario, on September 6, 1990, the government received 55.8% of the elected members and as a result it ended up with a majority government.

**Mr Turnbull:** It is 38.1% of the popular vote.

**The Chair:** Go ahead.

**Mr Wood:** I want to ask a question on broader-based bargaining, which you covered through different areas of your presentation. I wonder, are you suggesting a hiring hall or a registration system or some kind of sectoral bargaining? I'll let you respond to that. I'm just curious.

**Mr Ming:** We are addressing the problem. We are addressing the fundamental right for equity for the workers. If the workers in the larger workplaces can have a representative for them to bargain for their benefits and conditions, why don't workers in the small workplace have that right? This is what we're trying to address. But how to establish that kind of broader-based bargaining? That's why we recommend the government to set up a task force to look at this.

**The Chair:** Thank you, Mr Ming. The committee is grateful to you, as the spokesperson for the Chinese Workers' Association of Metropolitan Toronto, for your interest in this matter, for your participation in this process and for your valuable contribution to this committee's work. Of course, you're invited, as well as anybody else who wishes, to stay for the balance of the evening. We'll be hearing presentations through until approximately 8:30.

**Mr Ming:** Thank you very much.

[Applause]

**Mrs Margaret Marland (Mississauga South):** I hope they applaud me.

**The Chair:** I'm confident that applause was for Mr Ming, not for me, notwithstanding that I wish it were otherwise.

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#### HAMILTON AND DISTRICT CHAMBER OF COMMERCE

**The Chair:** The next participant is the Hamilton and District Chamber of Commerce having a seat. Your written material has already been distributed. It will form part of the record. It'll be made an exhibit.

People should know that the TV monitoring by the legislative broadcast system is done by technicians who



are not in the room; it's done by remote. They do an excellent job of keeping track of people who are speakers and presenters. We are very fortunate to have those people working for the legislative broadcast service and we are thankful to them.

**Mrs Marland:** And they're not unionized.

**The Chair:** Maybe they will be, after Bill 40, if it ever does get passed. Who knows? You never can tell. Go ahead, people.

**Mr Bill Filer:** Mr Chairman, ladies and gentlemen, thank you for this opportunity to present our views to this committee. My name is Bill Filer. I am appearing before you in my capacity as the president of the Hamilton and District Chamber of Commerce. I am also president in my wage-earning life of Filer Consultants, a consulting engineering firm in the greater Hamilton region.

With me tonight are Mr Gerry Brown, a member of our human resources committee, and Lee Kirkby, the executive director of our chamber. I'll read from the prepared text, which I think you now have copies of, in order to maintain our time schedule.

On behalf of the 850 corporate members of the Hamilton and District Chamber of Commerce and the hundreds, if not thousands, of individuals and organizations that have not had an opportunity to appear before the legislative committee on resources development on the proposed changes to the Ontario Labour Relations Act, we are appearing before you to express our views on this very important piece of legislation.

The Hamilton and District Chamber of Commerce for over 145 years has served as the voice of the greater Hamilton business community in support of policies that encourage the development of business and therefore employment in our area. Our membership comprises small and large companies representing all sectors of business and commerce and employing over 50,000 people.

The chamber has prepared this brief report to address the issues of Ontario labour relations reform as outlined in the minister's proposals. We are pleased to have had the opportunity to appear before the public hearings that the Minister of Labour held in Hamilton in January. However, we were disappointed in the government's reaction to the input given at those public hearings and hope that further modifications to the proposals will be made.

In our January submission, we outlined the impact of this legislation on the greater Hamilton business community, and we do not intend to cover all of that same material again tonight. However, most of it is still applicable, and therefore we have with us enough copies of that report to distribute to you today so that you can see directly how this legislation will impact the greater Hamilton business community.

Our findings reveal that job losses in our area could amount to almost 24,000 jobs if this legislation is passed. Future investment or expansion plans in the amount of \$547 million could also be lost in the greater Hamilton area. While these figures were based on the first draft of the legislation, for the most part our members agree that there has not been a significant enough change to the origi-

nally proposed legislation to discount the figures to any great degree. These legislative changes will have a devastating effect on our community.

In this brief presentation, we will attempt to cover some of the issues pertaining to the bill and offer some suggestions for improvement in the legislation, as provided to us by our members. We would hope that the legislative committee would consider these suggestions in clause-by-clause analysis of the impacts of such proposals before proceeding with any recommendations.

Bill 40 is supposed to protect the rights of individuals, to allow freedom of choice to be represented by a union and to foster cooperative approaches between employers and unions to increase worker participation in the workforce. In several instances, Bill 40 fails in these purposes.

The act is being transformed from one which protects employees who wish to organize to being one where it is the express purpose of the act to encourage, enhance or facilitate organizing and collective bargaining. This unnecessarily advances the interests of trade unions at the expense of both individuals and business.

The purpose clause should not be altered to promote the interests of unions in advance of those of individuals and employers.

It fails to protect the rights of an individual to choose to belong to a union by allowing a 40% threshold for employees. Furthermore, the proposals provide for automatic certification on 55% of employees joining a union. When coupled with the following provisions, the results totally disfranchise the individual who is not part of the 55% who have agreed to be represented by a union. They are left with no recourse to opt out, short of leaving their employment. They will be automatically assimilated into the union process.

Bill 40 should enshrine the rights of the individual and protect the democratic process of self-determination by providing for a supervised secret ballot vote for unionization to occur. In addition, there should be a requirement for prospective members to be given full disclosure of the costs of union membership prior to their signing of a union membership card.

It fails to protect the rights of an individual who is part of that 55% who have decided to join the union in an organizing drive, as there is no cooling-off process provided in the proposals. Consumers have more protection of their personal interests through the rights enshrined in the Consumer Protection Act, wherein cooling-off processes are provided in law.

Bill 40 should enshrine the rights of the individual by providing a cooling-off period of at least 48 hours to withdraw from union membership in an organizing drive.

It fails to protect the rights of an individual who may wish to continue to work during a strike.

Bill 40 should enshrine the rights of the individual by providing the option for an employee to work during a strike. The bill should also reflect the government's Industrial Policy Framework for Ontario, in which individual sectors of the economy are treated differently. More appropriate regulations providing specific provisions reflecting the needs of individual industry sectors would be more

appropriate with regard to replacement workers and the right to refuse to strike for union members.

Bill 40 should allow for family members of owner-operators, as well as employees from other company sites, to be eligible to work in the event of a strike.

It fails to protect the rights and property of an individual by allowing third-party picketing.

Bill 40 should enshrine the rights and reinforce the security of an individual and his or her property as the highest priority by establishing strict codes of conduct and restriction of hours of picketing. Stiff penalties for violations to these codes and restrictions should also be reflected in the bill.

Bill 40 should necessitate that the parties file, as a precondition to strike or lockout, a strike or lockout code of conduct which will provide a set of mutually agreeable conditions under which the parties will protect the public safety and interest while engaging in their dispute.

It fails to protect the rights of the individual by enshrining into law the practice of first-contract arbitration within 30 days, a process which discourages fair and earnest negotiations on either side.

Bill 40 should enshrine the rights of the individual by providing a more reasonable approach to first-contract arbitration, with a monitoring process by the board to ensure that fair and open checks are being implemented on both sides.

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It fails to provide for competition among employee groups in the process of contracting services by stipulating that employees from one contract group must accompany the contract to the next successful contractor group. Contract law provides a fundamental rule of privity of contract, whereby a third party cannot be bound to the provisions of a contract between two other parties. This fundamental principle is violated by this provision. This provision of Bill 40 calls the whole basis of Canadian contract law into question and has the ability to cause total chaos in resolving contracting disputes.

Bill 40 should respect the sanctity of contract law and retain the privity of contract between parties. This provision should be substantially altered or removed completely.

Bill 40 should enshrine the rights of the individual employers to hire who they wish to fulfil their contracts and thus operate their businesses in a manner they deem necessary to best serve the needs of their clients and customers.

It fails to protect the rights of the individual with respect to personal privacy in decisions relating to certification, representation, strike and ratification votes. These votes are not required to be taken as a supervised secret ballot and therefore are open to coercion and tampering.

Bill 40 should enshrine the rights of the individual by providing that certification, representation, strike and ratifications votes of a collective agreement be mandatory in all cases and be required to be conducted as supervised secret ballots.

It fails to develop a system for funding of the labour board process on a user-pay basis. These amendments will necessitate further government spending to implement.

The means to pay for these costs should not be placed upon the general taxpayers but should be borne by the parties involved.

Bill 40 should include recommendations to encourage a user-pay process for funding the work of the OLRB, such as special penalties for violation of a provincial code of conduct on picket lines, contributions to the costs from union dues to help pay for the work of the OLRB and a user-pay system for arbitration.

The Hamilton and District Chamber of Commerce believes that business people have individual rights as human beings in this province and that, in its current form, Bill 40 infringes on those rights as well as many other rights of individual employees as a whole.

We believe that a true consultation process is needed, one that works by starting from the understanding that all parties to the issue have genuine concerns. This means a process that breaks through the barriers of hostility and mutual distrust. We encourage a process that has all stakeholders sit down to understand the needs of all parties and to see if common ground can be found. We know that the proposals in Bill 40 are not the answer to these fundamental concerns.

It is one thing to protect an activity and declare the same to be lawful, it is quite different to say that within the province of Ontario, for all intents and purposes, a unionized business will be legally enshrined as the only way of doing business. Bill 40 seeks to create this situation in spite of the evidence that shows this is not the wish of a substantial majority of the workforce of Ontario.

We urge the government of Ontario not to proceed with Bill 40 in its present form. Thank you.

**The Chair:** Thank you, sir. We have five minutes per caucus.

**Mrs Marland:** Mr Filer, I'd like to commend the chamber of commerce for its presentation. I think it's very well thought out and very comprehensive. Obviously, Hamilton and district, with over 850 members, has or should have a very loud voice in this province and I'm sorry you haven't been heard so far with your concerns. Obviously, you were not consulted by the current socialist government before it drafted this legislation.

I want to comment on, and ask you a question about, the importance of the supervised secret ballot. When I substituted on this committee on Monday evening this week, as I'm doing again this evening, I mentioned to the Chair at that time that the spokesperson for the Progressive Conservative Party, Elizabeth Witmer, is the critic for Labour in our party and that she had issued a press release on June 23 asking for a secret ballot. In fact, she tabled a private bill in the House in November 1991 requesting a secret ballot, since we could not get that concurrence from the Minister of Labour.

I think that in your brief you have outlined very carefully why the secret ballot is necessary. If we were to say, "We can't get a handle on the whole process, because the ideology of the Bob Rae government is towards unions," if we accept that as a given—and we can't change it since it is a majority government, obviously—if it is such a good



thing for the workers of this province, in your opinion, what is it you think the government that drafted this legislation is afraid of about requiring all votes to be done by secret ballots?

What is it that you think makes them want to have public voting, as you've so well outlined here, on all certification, representation, strike and ratification votes? Why do you think it is that they are so frightened of letting people do this by secret ballot, where no one will know whether they've complied with their shop steward or anyone else who might be giving direction to them in a vote?

**Mr Filer:** Thank you for that question. I can only speculate since I do not know what is in the minds of the NDP government and the proposers of the legislation. However, it would be fair to say that in a democratic process, it seems the secret ballot is one of the fundamentals we treasure very deeply. I am not familiar enough with the current union operation to know whether secret ballots are normal, but I see no reason why, when legislation is being proposed, the fundamental democratic right of the secret ballot would not be included as an element of extreme fairness and protection for people under these circumstances.

**The Chair:** Thank you. Mr Ward.

**Mrs Marland:** Was that five minutes, Mr Chair?

**The Chair:** It was four minutes and 25 seconds.

**Mr Ward:** The issue of replacement worker restrictions is very contentious, to say the least. During the hearings over the last few weeks, as well as in the primary consultation period of early spring, I don't think there's been one proponent of Bill 40, or proponent for updating the labour act, who has said the entire replacement worker restriction should be removed. In fact, many of the proponents have said it should be tightened, that under Bill 40 there are too many loopholes.

There have been some suggestions that part of the process should involve a tripartite system where business, labour and government get together, take a look at the act and come up with a consensus and recommendations. Since the feeling in the labour movement is so strong for anti-replacement-worker restrictions, what type of restrictions can the Hamilton and District Chamber of Commerce support? It seems to me if that process is to work, we have to have something. What restrictions would you see the chamber supporting as far as restricting replacement workers is concerned?

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**Mr Filer:** I'd like to ask our executive director, Lee Kirkby, to answer that, if I may, please.

**Mr Lee Kirkby:** We're obviously here to represent our companies and the employees they're concerned about, the people they pay wages to and to whom they give employment. Frankly, we have not had an opportunity in this whole process to analyse what elements of a particular situation there might be some value in in replacement workers being restricted or not. That's one of the difficulties of the whole process we've argued about, which is that there's never been an opportunity to sit down

and deal with a single issue like that and say, "In this instance there may be some benefit to looking at alterations," or not, because it's been all or nothing in the whole process since this legislation was tabled some two and a half months ago.

At the present time, I think the thing people have to deal with is that our members are responding to what's before them. They don't see any situation where it's acceptable as it's presented at the present time. If what you're talking about is finding a compromise route, this process is not going to lead us to a compromise, because there's no opportunity for us to discuss a compromise.

**Mr Ward:** There have been opportunities for other groups to submit additional information. I would appreciate it if you could take that issue back to your membership and come up with what you think would be appropriate in restricting replacement workers and provide that for this committee. We'll be meeting well into this month, and probably in October as well.

Hamilton is just down the road from my fine community of Brantford. In fact, many of my constituents work in one of your plants, Camco, which has, and I hope will continue to have, a long association with Hamilton.

You're opposed to or have concerns under Bill 40 about the ability of security guards to select a union of their choice and you have some concerns about the restrictions on petitions, although you do qualify that by saying, "If the restrictions are in place, we should have a secret ballot." Both those issues are in every other jurisdiction in Canada, in every other province, and they seem to work without much controversy. Yet the secret ballot is not part of the process; it is, but they still have the automatic certification ability as well in every other jurisdiction.

I'm not sure if the chamber was aware of that upon receiving that information, and this may be the first time. Would you still have opposition, seeing how it is in place everywhere else in Canada? It seems to be working without undue stress on the ability of business to conduct their operations.

**Mr Filer:** I guess I would like to partly answer that by posing a question to Mr Ward that simply says, is a secret ballot commonly used in the union movement to arrive at decisions?

**Mr Ward:** Sorry?

**Mr Filer:** Is the use of a secret ballot in common use in the union movement in Canada? That's a fact I really don't know, and apparently you should know that.

**Mr Ward:** The secret ballot is in use when it comes to strike votes, when it comes to collective agreement ratification. Throughout Canada the secret ballot is in place if, during an organizing drive, a certain percentage of support is not gathered—there are limits—primarily 55%. If you can prove 55% support, it's automatic certification.

**Mr Filer:** It's my understanding that the proposal in the legislation is that a secret ballot in that initial organizing move is not required, is not contemplated. I guess my question is, why, if the ballot is otherwise in common use in the country?

**The Chair:** Thank you. I agree, Ms Marland, five minutes of Mr Ward asking questions seemed much longer than five minutes of you asking questions, but there's nothing we can do about that.

**Mr Phillips:** Thank you very much to the chamber. I guess I would just give the chamber an observation and then ask a question. I think Premier Rae, as he looks at the economy, has always said: "We're going to pull out of our economic malaise through partnerships. We're going to get business and labour working together." I frankly have seen nothing in his economic recovery plan to give me any hope, but that's what he talks about.

This exercise we're going through has really caused me to become depressed about that possibility. There has not been, I don't think, a leader in the labour movement who's come before the committee who hasn't universally condemned the business community, not just parts of the business community but the whole business community. You've been called spoiled crybabies, hysterical. It's been said that you want to start class warfare, that you care nothing about the workers. It seems like the labour movement's dug in, has made up its mind about the business community.

On the other side, we've heard universally from the business community, without exception—I can't find one business person, and I challenge the government to find me one business person, to bring him before us, who says that this is going to be good for creating jobs in Ontario. Find me one.

In any event, my question to the chamber is this: I hate to be a pessimist about this, but the government members have shown no intention of accepting any significant amendments. We'll know that in a few weeks. But assume this passes, and then the government says: "Let's get on with our partnerships. Sorry about that little interruption, but let's get on with the partnerships to build the economy." How do you see things unfolding over the next two to three years in our Ontario economy when this essentially is the law?

**Mr Filer:** To be very brief and succinct about it, I think very badly. I think what is developing because of the denial of the Bob Rae government of any of the adverse effects which the business community is predicting—they say we're prejudiced and those things aren't going to happen, to just keep going the way we are and see they don't happen. In fact they've already begun to happen. Mr Phillips, we've seen lots of things like free trade being blamed for the economic difficulties we are in, which in my view is a red herring. Those difficulties are there and we understand them, but the fact of the matter is that the lack of trust and willingness to be a team player in this whole issue of labour-management relationships is fundamentally getting worse day by day. The confidence of the business community to further invest in this province is being decreased by the hour, and I don't see that being reversed under the present form of the proposed legislation.

**The Chair:** Gentlemen, the committee expresses its gratitude to you as spokespeople for the Hamilton and District Chamber of Commerce and to the chamber and its

members for their interest in this legislation and for your participation here. We apologize for the late hour and trust that it wasn't grossly inconvenient to you, but we are thankful to you for coming here from Hamilton and sharing your views with us. Thank you. Take care. Have a safe trip back home.

**Mr Turnbull:** On a point of order, Mr Chairman: I notice that there are no other presenters scheduled after 8 o'clock. Is that correct?

**The Chair:** That's correct.

**Mr Turnbull:** Did we have a cancellation, then?

**The Chair:** No.

The next participant is the United Food and Commercial Workers International Union.

**Mr Turnbull:** Mr Chair—

**The Chair:** Thank you, Hamilton and District Chamber of Commerce. After we're finished with the 8 o'clock presenter, we'll entertain all the business any members want to raise, but we've got people who were scheduled here who—

Interjection.

**The Chair:** By all means. Feel free to stay or go as you wish. People were scheduled here and we'll not use their time. We could raise points of order promptly at 8:30 when the last group is completed.

**Mr Turnbull:** Mr Chair, I have the right to raise a point of order at any time.

**The Chair:** Okay. Raise the point of order and tell me what it is.

**Mr Turnbull:** There's a gentleman who's sitting in the audience who was here all of yesterday evening. He's been refused time at the committee and I see that we are supposed to be sitting till 9 o'clock. I'm sure he would like to be heard. I'm sorry, I don't know his name and I don't know the organization, but I know he has an interesting point of view and he left a brief on everybody's desk yesterday evening. Could he be heard at 8:30, so that he could prepare for it now?

**The Chair:** I was chastised when we were travelling about and was told by committee members, as is their right to tell me, not to do that, so I won't do it. However, the committee can do it, as it wishes. If there's consent in that regard, I'm perfectly agreeable.

**Mr Hope:** No consent.

**The Chair:** I'm sorry?

**Mr Hope:** You say you are asking for consent to a point of order?

**The Chair:** Yes.

**Mr Hope:** There's no consent to the point of order.

**The Chair:** You may want to talk to some of these people during—

**Mr Turnbull:** I'll make it a motion then.

**The Chair:** All right. We'll entertain that motion at 8:30.



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UNITED FOOD AND COMMERCIAL WORKERS  
INTERNATIONAL UNION,  
ONTARIO PROVINCIAL COUNCIL

**The Chair:** Now the United Food and Commercial Workers are here, as it is 7:30. The UFCW is a long-time advocate of a common pause day.

**Mr Art McIntosh:** I'd like to start by apologizing for being late. We were scheduled for 7 o'clock, but I don't know which is worse, actually being late to get here or the fact that we might have to compete with Murphy Brown for ratings in this time slot.

**The Chair:** People are watching, they're interested. I thought for a minute that maybe you were mad about the Sunday shopping issue, because I am.

**Mrs Marland:** That's all right, Mr Chairman. I thought we'd really enjoy that debate.

**The Chair:** Go ahead.

**Mr McIntosh:** I'd like to start by introducing the people who are here for the United Food and Commercial Workers provincial council. We have Sister Sue Yates from UFCW Canada, an international representative of our union, and John Tremble, a UFCW researcher. I am Art McIntosh, the president of the UFCW provincial council. I'd like to thank the committee for giving us an opportunity to appear here tonight and give you our position on the OLRA amendments.

The UFCW Ontario provincial council strongly supports the position that's already been put forward by UFCW Canada and the Ontario Federation of Labour on the proposed reforms. Further, we would like to commend the government on its approach to this legislation and the fact that we are going through public meetings such as these.

The Ontario provincial council represents in excess of 70,000 workers in Ontario in a multitude of workplaces, including retail food, industrial locations such as meat-packing houses, poultry and canning facilities, as well as brewery and soft drink workers, just to name a few. Ideally, we would have preferred to be able to address all of the major areas the amendments speak to; however, since time is limited, we'd like to highlight some of the major areas that we feel are essential to the workers of this province.

The first proposed amendment that I will address is replacement workers or, as we call them, scabs. At the turn of the 1980s, I was involved in a strike, and I'd like to share some of the problems that we faced as workers on the picket line, just to give you a better understanding of why change in this area of the act is so very vitally important.

We were trying to establish a first contract with an unwilling employer. As workers, the issues were derived from some basic needs, including modest wage increases, job security, seniority recognition and health and safety concerns. Unfortunately, these were definitely not the issues of the employer, whose only visible concerns were focused around maintaining profits and customer service,

and it was mostly about breaking our workers' will and the union that we had established in that location.

Let me explain some of the hardships that were felt by the workers when they were confronted with a strike situation. Their incomes were lost and they were replaced by a mere \$40-a-week strike pay. Even in 1980, you couldn't feed a family of four on \$40 a week. Their health care benefits were cut off, leaving them to pay their own medical expenses.

As the months passed, many were forced by creditors and banks to give up their homes or find alternative ways of payment, like selling personal items or seeking employment elsewhere. Even the basics became luxuries to these workers. Try telling a child that he can't attend piano lessons any more because mom and dad can't afford them or, even worse, later having to tell that same child that you have to sell the piano just to pay the rent.

These are some of the bitter realities that were faced by workers in this and other strikes as they walked the line, while employers adopt a business-as-usual attitude through hiring replacement workers, scabs, and turning their backs on the employees who had been employed there for six to 10 years.

These workers were only looking for fundamental rights and needs to be met. It's no wonder violence broke out on the picket line when confronted with the employer's lack of caring for the workers. After several months of bitter confrontation, the strike was lost, as were the jobs of those who were on strike, and all because an employer was allowed to use scab labour to continue his business. In retrospect, it is my heartfelt belief that if anti-scab legislation would have been in place at the time of that strike, the outcome would have been significantly different.

I'd like to commend the Minister of Labour for introducing the amendments in this area, and I would like you to keep in mind that over 95% of our collective agreements in Ontario are settled without going on strike, which means that the amendments themselves will have a minimal effect. Contrary to what some business interests would lead you to believe, we believe the amendments go a long way towards creating fairer, more balanced rules for workers who opt for a legal strike or are victimized by an employer's lockout.

In the event of a legal strike or lockout, the amendments would see strikes shortened and picket line violence reduced, as not only the workers would be pressed to reach an agreement, but so would the employer. These amendments will not lead to more strikes. To the contrary, they'll make the threat of the strike more credible, thereby promoting settlement at the bargaining table.

Further to the proposed amendments, we feel additional changes are required to increase their effectiveness.

The requirement of a 60% majority strike vote should be replaced by one of a simple majority of over 50%, as we strongly believe in the principle that majority rules. Further to this provision, allowing supervisors and non-bargaining unit employees at the location of the strike to continue the work of striking members will only pit worker against worker, and we'll see the effectiveness of the threat of strikes severely reduced. We would urge the

government to delete this provision in the final draft of the legislation.

Notably, the restrictions on performing bargaining unit work only apply to the location where a strike is occurring, thus allowing the employer to legally shift bargaining unit work to another geographic location. This will only further erode the intent and the effectiveness of the replacement worker provision and should also be deleted.

Regarding membership fees being eliminated, the \$1 membership fee will no longer have to be paid by an employee in order to become a member for the purpose of certification. While this is not going to make it easier for unions to convince workers to become trade union members, its main effect will be to make it easier to show union membership before the Ontario Labour Relations Board. We support this proposal as it eliminates one of the objections an employer might use to delay or frustrate the certification application.

Under the existing law, an individual has to pay \$1 to a trade union in order to become a member of the trade union for certification. The union has to submit documentation—evidence—to prove the payment and the receipt. These requirements lead to some disputes over whether or not the dollar was actually paid and what the effect is if someone pays \$1 on someone else's behalf. Several applications for certification have been dismissed because of non-payment of \$1. Many applications have also been delayed by unfounded allegations of non-payment.

The \$1 membership fee can also confuse a person whom you're trying to organize. I can recall organizing campaigns where some people thought that the \$1 I was collecting was my commission. I had to further explain to these people that I don't receive a commission, that I'm a volunteer and that the \$1 was mandated by the government. Abolishing this \$1 fee will eliminate delays and expenses associated with board hearings over this issue.

In the area of successor rights, Bill 40 amendments to the act concerning successor rights on the sale of a business represent welcome improvements. A successor employer will now be more obliged to take the place of the former employer in relation to the trade union in an expanded number of situations, including a proceeding before the board under any act, a proceeding before any person or body under this act or a proceeding before the board or another person or body pertaining to a collective agreement. These amendments are designed to ensure that bargaining rights and obligations are not delayed or avoided by the sale of business by making the successor replace the former employer to the extent possible.

Under the current provisions, problems have arisen as the parties have had to return to the beginning of the bargaining process if the business is sold during negotiations. It has led to costly duplication of effort as well as frustrating delay to the union members. With these amendments, the successor employer will be bound by any and all terms that have already been negotiated. Statutory obligations and the grievance provisions of the pre-existing collective agreement will now remain in effect

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What is still missing from these provisions is the inclusion of the sale of assets in the sale of the business. Successor rights is one of the most important issues to UFCW and we want to raise it because our members are hurt more than any other organization in this area, and we're very concerned that the amendments don't go far enough.

The provincial council is concerned that the proposed amendments will not adequately deal with situations where there has been a sale of assets and a purchaser conducts similar business activities on the same premises. Under the current act, this kind of transfer is not generally deemed to be a sale of business and is not covered by successor rights.

In our UFCW, Canada submission there are several examples of board decisions where somebody has moved out of a grocery store or food store or a retail unit in a shopping plaza, and there is no sale of business as such. In some of these sales the only things that they've bought are shelves, and they sublet the premises. If the previous employer had other stores in the province or in the area, the people we represented in the store were moved to other locations where possible, and now the new employer is doing the same kind of business. It could be a food store again, with no change, and the employer will be attracting the same customers as the previous one.

The board has found that this is not the sale of business but the sale of assets. So each time there is a closure, especially in a single-location store and somebody buys that store and puts in the same kind of operation, our members are out of work and we can't represent them. Almost every day in this province there's sale of assets but no sale of business and UFCW finds itself in a position where we have to go back and reorganize the store again and again.

We believe successor rights are of important interest to both the workers and business owners. What we propose to you in section 64 is that the "sale of business" includes significant sale of assets to an employer where the employees are engaged in similar work at the premises as that of the vendor of the assets who conducted business there before.

The government of Ontario is to be commended for initiating a full consultation process enabling views to be heard on the proposed amendments to the labour law. The UFCW provincial council strongly urges that the sale of assets be included in these reforms, as Bill 40 represents a progressive package of provisions that will help working people in Ontario maintain and advance their standard of living and their quality of life.

At this point in time I'd like ask John Tremble to go through a situation where we had a sale of assets.

**Mr John Tremble:** One of the issues I wanted to raise is one that was also raised by our Canadian director, Tom Kukovica, during his presentations, in which he raised the issue of successor rights once again.

In our submission, you'll note at the end we attach a number of labour relations board summary cases which raise the issue of successor rights. One of our union locals, Local 175, had a case before the board in which it was going against Steinberg on behalf of Miracle Food Mart.



In this instance the application rose out of the operation of a Dutch Boy store in Kitchener, Ontario, and on those premises Steinberg had previously operated a Miracle Food Mart store. From April 1980 to June 1986, Steinberg operated Miracle Food Mart in the Laurentian Heights shopping centre, which is owned by the developer Community Expansion. In that case, the UFCW sought a declaration under section 63 of the act that Dutch Boy's acquisition of the store lease and fixtures and leasehold improvements constitute a sale under the act, making Dutch Boy a successor employer.

The board found, which is typical of a number of cases of this nature, that Steinberg surrendered to Community Expansion its right to occupy the store. What generally happens in these cases is that the stores rent their space from the shopping store developers and then when they cease their business they give the premises back to the shopping mall.

In this case, Steinberg withdrew from the Kitchener-Waterloo market and Dutch Boy expanded its business into the former Steinberg premises. The board found that this transaction did not constitute a sale of business under section 63 of the act and as a result the application was dismissed. So what we are advocating in our position is that the definition of the sale of business include a significant sale of assets to an employer where the employees are engaged in the same type of or similar work at the same premises the vendor of the assets conducted its business. We believe this sort of amendment to the act would be quite beneficial in the long term.

**The Chair:** Thank you. We have four minutes per caucus. Four minutes, Mr Hope, please.

**Mr Hope:** Just four minutes? Okay. There are a couple of areas I'd like to touch on. First of all, there's getting rid of the dollar. As a matter of fact I was talking to one of my friends at lunch today and he thought it was a ploy by Mulroney. They got rid of the paper dollar because we could no longer staple it to the membership card. He was saying that one of the problems with the loonie is it creates a lot of holes in his pockets and then the money falls out of his pocket. It was just a ploy of the Tory party to get rid of unions.

The other area I wish to talk about is that the emphasis has been on replacement workers quite a bit lately. I was noticing today we had one of the national unions come before us to make a presentation. I got reading the pamphlet here and not all chambers of commerce—I notice you're Canadian, an international union—are against replacement workers. As a matter of fact, this president of Yellowknife Chamber of Commerce supported the miners against replacement workers. They make it very clear, because one of the areas he touches on is that there are jobs, "It's our community and these people spend the money in our community and it's not fair."

The area you really bring up, and I think is one that's been talked about very heavily, is around replacement workers. Project Economic Growth says that workers should be out on the street for 60 days before we can implement the replacement worker legislation. You just

brought up about the \$50 or \$100 provided to feed a family of four and it's a big decrease in the pay.

I just want your viewpoint because you are democratically elected; some other people wish to make other people believe that you're not democratically elected by secret ballot. I think it's important that you're working on the shop floor, understanding what's going on, how a family feels about receiving strike pay versus a normal weekly pay.

**Mr McIntosh:** Quite obviously, I think you've already answered the question yourself in the fact that I would like to make it very clear to everyone who is sitting here that I am a rank-and-file member. I do not work for the union on a full-time basis. I work for Zehrs Markets in Guelph, Ontario.

I can tell you the hardship workers feel when they are on the picket line, even for one week, with the minimal amount of pay they receive and the amount of degradation they have to go through watching other people come in and take their jobs. Quite often, employers will be willing to pay premium rates—actually pay scab labour more than they would pay their regular workers—just so they can cross the picket line and go into work. As I said, it's no wonder you get into a situation where you have extensive violence on the picket line based on those kinds of conditions.

**Mr Ward:** The UFCW is a very progressive trade union. The membership I think are forward-looking. Do you have examples of where the UFCW has cooperated and worked as a team with the employers for the betterment of both?

**Mr McIntosh:** Most definitely. The United Food and Commercial Workers International Union, Local 1977, the organization I'm a proud member of—and I'm very proud of my employer, Zehrs Markets, also. We have a joint facility in Cambridge, Ontario, where extensive training goes on between the employer and the union to make sure we have members in our workplace who are trained to the utmost possibilities in their positions as meat cutters, bakers, department heads, assistant store managers. It's a joint effort and it works very effectively.

**Ms Sue Yates:** Zehrs is part of the National Grocers group and in one particular instance last January the UFCW national office, with National Grocers, cosponsored a conference on balancing work and family responsibility, which is a joint partnership initiative that goes to show that we have to not only look at the concerns of putting bread and butter on the table, but also look at the issues and concerns of the workers and the company to be competitive and to be in a position to be productive as well.

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**Mr Offer:** Thank you very much for your presentation. There was one aspect in your presentation which I would like to explore with you a little bit this evening. This presentation, I think, was made in Kingston?

**Mr McIntosh:** Not this presentation, no. The brief you have received may be similar to those that you have had before.

**Mr Offer:** Yes, because there's one area which appears in both, and I've been asking questions on this because I think it's a terrific idea; that is, to provide an employer with a notice of the organizing campaign, a copy of which would be sent to the board. This notice would provide the name of the employer, the name of the union, a general description of those employees the union is seeking to organize and the lawful rights and obligations of employees, employers and unions according to the act. I think that is an absolutely wonderful suggestion.

I just want to say that I've been asking people this, and they seem to be a little reticent about this type of notice, which would provide, to workers, their rights. I must say, in all candour, that it's unions that are opposed to this type of notice. I'd like to get your thoughts on this.

**Ms Yates:** Okay, but it goes hand in hand too with an organizing drive.

**Mr Offer:** Sure.

**Ms Yates:** As it stands right now, we've been painted with a brush of some sort of taking workers into dark alleyways and signing them up. We're asking for the employee lists, and in return for the employee lists, as a gesture of good-faith bargaining, we also give the information about the union. You have an open concept. The whole aspect is to try not to be adversarial but to work in a harmonious type of relationship to the benefit of workers. Number one, we go to Webster's dictionary and the definition of a labour union is people—not the unions, not the bad guys, but people—working collectively together to better the working conditions. Why should we always be in an adversarial type of role with one another? We're there for the benefit of all.

**Mr Offer:** I agree with you.

**The Chair:** Two minutes.

**Mr McGuinty:** That issue is one that we've raised, I guess, numerous times. I just want to second my colleague's comments to the effect that we're very pleased to see that kind of recommendation. Any genuine effort to lift the shroud of secrecy which you referred to here would, I think, be of benefit to both the employer and the employees.

I want to talk about something else you made reference to, though, and that's disciplinary action during an organizing campaign. The thrust of your presentation here in connection with that matter has been to ensure that an employer is made accountable for any reprehensible activity—any intimidation, coercion or threat of dismissal—when there's an organizing drive under way. I agree with that 100%.

Bill 40 beefs up the penalty provisions. It provides that if there is any evidence of that and it's proven before the board, there is automatic certification, a pretty significant penalty. However, just as there are good and bad employers—

**The Chair:** Ms Marland, do you want Mr McGuinty to have some of your time?

**Mr McGuinty:** —I'm sure you will recognize there are good and bad organizers. We've had evidence of some—

**The Chair:** Mr McGuinty, Ms Marland doesn't want you to have any of her time.

**Mr McGuinty:** I'm just wondering if you might see the need for some kind of a provision to call for organizers—

**The Chair:** Go ahead, Ms Marland. It's your time.

**Mrs Marland:** Thank you, Mr Chairman.

I really appreciate some of the viewpoints you're putting forth this evening, and I have a lot of concern with some of the others. I thought it was really significant that you said, "We're happy we're going through these public hearings, such as this evening."

I want you to know that if the government had had its way, there would have been no public hearings on Bill 40 whatsoever. We had to give up substantially, and to have the rules of this Ontario Legislature changed, in order to get something that we felt we needed on behalf of the public of this province; namely, the hearings on this significant legislation. I just want you to understand that was not the wish of the government which you're here supporting tonight.

I'm very concerned when you talk in your executive summary on page 2. There are two things I want to ask you about specifically. You say here: "We urge the government to eliminate petitions altogether as well as an individual's ability to revoke union membership during certification. A worker who wishes to decertify may do so in the normal manner by applying to the Ontario Labour Relations Board prior to the termination of the collective agreement." I really wonder how you feel, with such a strong statement against an individual worker's rights, that you are here speaking on behalf of workers as a whole in the province.

The other question I have directly is to you, Sue Yates. You're recommending that where a trade union has 10 legitimate membership cards signed, the employer must immediately forward to the trade union a copy of the list of employees, which must be provided to the board. I ask you, as woman to woman, if you can defend that recommendation. Do you not have any concerns about the names and addresses particularly of vulnerable female employees in any workplace in this province, when their names and addresses would be given out to union members for certification drives?

**Mr Wood:** Management has them.

**Mrs Marland:** Management has them and management needs to have them. They're employees. It's not a question of management having a list. That's a ludicrous interjection, I would suggest, Mr Wood.

**Ms Yates:** I'm going to answer the second part of your question first, because as woman to woman, I worked in a grocery store that was non-unionized for about four years, and I'll tell you that I wish somebody had contacted me from a union. I was sexually harassed. If I didn't come across to the store manager, my job was threatened.

I wasn't out there working for pin money. I was out there working because my family needed the income. I had two small kids and I was married. I lived in a small community where you couldn't say a damn word, because it would get all over the community, which would cause problems for me and my husband and my family.



I was just lucky enough that somebody else in my workplace also was having problems with the store manager. We were scared. The majority of us were part-time. There were very few people who were full-time. If it weren't for the full-time people encouraging us part-time women—because you've got to understand, in a grocery store, the majority of workers are women.

**Mrs Marland:** Of course.

**Ms Yates:** They're not always students. A lot of them are women out there trying to better their family life.

I went through hell. I knew there was something wrong. I knew some type of law was being broken, but I didn't know where to turn. I didn't know that I could go to the labour board, I didn't know about employment standards rights, because, let's face it, society does not educate women on what their rights are.

We're supposed to look after the family, bring in whatever little income we can, but we're part of the family unit. We're there to make sure the family runs okay. We're not supposed to get involved in politics per se, the business aspects per se of the business that we maybe work in. Now that's starting to change, but I will tell you, personally, I was scared, very scared. Maybe if a union had had a list of the workers and it didn't have to be secret—because in my community, the majority of union organizers to date are male.

In small towns and villages in this province, a couple of men go knocking on a door, knowing that the husband, or whoever, is at work, and you've got other people in that community looking at that house and saying, "How come these two men are there?" and they know for sure they're not Jehovah's Witnesses. Then the rumours go around town. If there had been a list and I had been contacted by phone, I could have talked to my husband and said: "There are some union people around. They'd like to talk to me about a union. Would you please sit here with me while they come over?"

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Another thing that I have learned about women, and learned greatly, is that they don't just get up and speak out without knowing a lot about an issue first. They research and find out everything they can about a subject before they'll make a comment on it. We don't tend to have our counterparts' ability to get up and maybe not know a lot about a topic. We have to know it inside and out, and maybe that's where the phrase comes from when men will say to women, "Don't say, 'I told you so.'"

I know that's what I did. Before I signed that card to join a union, I had to know the dues structure, I had to know what it was going to offer me as a person and how it was going to benefit not just me but my family. I don't think that in certain cases where the lists are made available—I mean, for crying out loud, how much junk mail do you get? I know I get a lot. You subscribe to Maclean's magazine, and the next thing you know your name's on a list.

When this deals with your livelihood, when it deals with job security—I'll tell you I don't wish for another woman to have to go through what I did: being threatened, on the job, for sexual favours; being discriminated against

and made to work the worst hours possible in a week that you had to work; plus, at the time before Sunday shopping came about, when Saturday was supposed to be the part of the weekend with your family, having to work every weekend, every Saturday, from store opening to store closing and all the night-time shifts. My children have gone to bed at night without their mother being able to tuck them in, and I've had to be at work the next morning before I could have the chance to send them off. I'm sorry. That is dear to my heart.

**Mrs Marland:** You don't think the existing laws protect you?

**Ms Yates:** No, I don't.

**Mrs Marland:** Even if you were familiar with them?

**Ms Yates:** No, I don't. I saw what the store manager I worked under did to the employees, not just to me but to other workers in that workplace.

**Mrs Marland:** Obviously, none of us in this room condone the experience you have had, and I share the concern that women in this province do not know they are protected today under existing provincial statutes from sexual harassment or any kind of intimidation in the workplace. They are protected today without this bill. My concern is that this bill in fact goes against 70% of the workforce which is not unionized in this province today.

In your brief you're saying that when workers wish to revoke their union membership during certification, you won't even give them that right. I think I'm very concerned about the individual worker's rights, and they're not being addressed in the recommendations you're making here.

I am sympathetic to the jeopardy of women in the workplace in any circumstance, but I believe that through education—and it's the responsibility of all of us for the education; the fact that you didn't know what your rights were and that women today don't know what their rights are. But the fact is that they are protected today by existing statutes in Ontario. It's up to government and employers, I may suggest, to make sure that everyone knows what their rights are when they go to work.

**Ms Yates:** Unfortunately, we're not out there to learn what our rights are as workers; we're out there to make a living. If you've tried—

**Mrs Marland:** We know what our rights are with UIC—

**The Chair:** Go ahead, please.

**Ms Yates:** If you've tried to file a complaint with the Human Rights Commission or with WCB, and when the majority of workers we represent are in part-time work, especially in the service sector industry, you're not out there to make a career, you're out there to make a living, because there isn't a career in the service sector and there isn't a career with part-time.

**The Chair:** Thank you kindly to the United Food and Commercial Workers, Ontario provincial council. To you, Mr McIntosh and Mr Tremble, and to you, Ms Yates, this committee expresses its gratitude for your contribution to this process. You've provided valuable input and we are indeed grateful to you. Thank you kindly. Take care.

## RAILWAY ASSOCIATION OF CANADA

**The Chair:** The next participant is the Railway Association of Canada, if those people speaking for the Railway Association of Canada would please come forward, have a seat, tell us their names, their titles, if any, and proceed with their submissions. They've filed, and it is an exhibit, a written brief which will become part of the record. They can read part of it or all of it, but whichever way they do it, we'd very much like for them to keep the last half of the half-hour for questions and dialogue.

**Mr Bob Ballantyne:** My name is Bob Ballantyne and I'm the president of the Railway Association of Canada, the trade association of the Canadian railway industry. We appreciate the opportunity to appear before the standing committee to comment on Bill 40, which will amend various provisions of the Employment Standards Act and other related acts.

The RAC was founded in 1917 to coordinate Canadian railway activities in the First World War, and the RAC provides a forum for developing common standards and practices for the industry and is the vehicle through which the Canadian railway industry works with the Association of American Railroads to develop continent-wide standards.

The letters patent, granted in 1953, state that one of the objectives of the association is to make representation to any level of government on matters of common interest to the members. Bill 40 is of interest to all our member companies that operate in Ontario.

The 23 member railways of the RAC account for over 98% of all railway activity in Canada, both passenger and freight, in an industry that has revenues of approximately \$6 billion. Among our 23 members, the following operate in Ontario: CN, CP, Via, Algoma Central Railway, Ontario Northland Transportation Commission, Essex Terminal Railway, GO Transit, CSX Transportation, Norfolk Southern Corp and Wisconsin Central.

There are several proposals included in Bill 40 that are of concern to the railways and these were discussed in some detail in our written brief. This evening we would like to present the highlights of that brief and we'd be pleased to answer questions.

I'd like to introduce the other members of our delegation: Don Brazier, who's assistant vice-president, industrial relations, CP Rail, Mickey Healy, who's director of labour relations, CN, and Blake Olson, who's the regional manager of human resources for Canadian National in Toronto. Mr Brazier will make the presentation based on the brief, and the other members of the delegation will comment and answer questions as appropriate.

**Mr Don Brazier:** Ladies and gentlemen, for your information, what I'm about to read is a summary of the brief. It tries to capture the salient points we made in the submission.

Given the extent of railway operations in Ontario, the RAC, which is the acronym for the Railway Association of Canada, naturally has a high level of interest in Bill 40. We have identified three specific areas of concern. These are: the successor rights proposals, specifically the transfer

from federal to provincial jurisdiction, use of replacement workers and third-party picketing.

The first I'd like to talk about is successor rights. The proposed legislation on successor rights, if enacted, will have a negative impact on future rail transportation services in Ontario. Section 30 of the bill would provide for the successor rights provision of the Labour Relations Act to apply when there is a sale of business resulting in a transfer of labour jurisdiction from federal to provincial responsibility. This proposal impacts on current developments in the railway industry, ie, the establishment of short-line railway operations, a procedure legally sanctioned in the National Transportation Act.

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The RAC strongly believes that the very notion of a transfer of business from federal to provincial jurisdiction presupposes that the fundamental nature of the business is going to be altered. It follows, therefore, that to automatically extend successor rights to cases involving such a transfer militates against the policy that bargaining rights should only be preserved where there is continuity of a business and it remains essentially the same.

Short-line sales are becoming more frequent as the Canadian railways try to compete in the marketplace. By "short-line sale," we mean the sale of a major railroad or a section of track, within the industry usually referred to as a subdivision, usually of 300 miles or less to another operator. In certain instances, short lines can provide the only viable alternative to lines whose operations are marginal for major railroads and which otherwise would become subject to abandonment proceedings.

The existing collective agreements within CP Rail and CN Rail—and the industry is 85% unionized—entitle senior employees to exercise seniority rights if a short line is approved. As well, CN and CP's collective agreements contain substantial job security benefits. Furthermore, in short lines the new operator will of course have a requirement for new employees to operate the line. The alternative of a short-line sale would appear to be advantageous to all.

If short-line operations are required by the proposed legislation to accept employees and their collective agreements, ie, successor rights apply, the short-line operators have no greater flexibility to improve operations than the railways that are trying to sell off these marginal lines. The railway industry, with its long tradition of unionization, is of course not opposed to unionized short-line operators. However, the short-line operators must be given an opportunity to negotiate their own agreements with their own unions and not have agreements imposed on them, negotiated with respect to entirely different railroad operations running from coast to coast.

For example—here's the practical aspect; we're getting into the practical problems rather than the principle here—if such a provision had applied, it would have meant that as a result of the recent transaction between CN and Railtex, which is a short-line operator, the latter would have been faced with our collective agreements covering 10 employees to operate a 112-kilometre railway, and in one instance we'd have one collective agreement covering



one employee. That's the kind of situation this legislation would have in terms of successor rights.

Short-line sales will stop as quickly as they started if the short-line operator is hampered by a successor rights clause as is proposed by the draft legislation. The result will be an increase in the abandonment of lines and a reduction in rail transportation available to Ontario communities and shippers.

The railway association accepts and appreciates that the proposed subsection 64.1(3) is an attempt to address the concerns made by the railway industry during discussion of the Ontario Labour ministry's white paper. From our perspective, unfortunately, the recognition by the board of matters "it considers appropriate in the circumstances" is clearly insufficient. What is required is a clear legislative directive to the board stating specifically that the successor rights provisions do not apply when the fundamental nature of the business has changed. We recommend, and I believe the words are right in the submission, that subsection 64.1(3) be reworded as follows:

"In determining applications under section 64 concerning the sale of a business described in subsection (1), the board will not consider those sales which involve a fragment of the business of the predecessor employer and where the essential nature of the business has changed."

In this way, when a transcontinental railroad sells a subdivision as a short line, the purchaser would not be covered by this proposed successor rights provision. We're clearly not opposed to the principle of successor rights. We feel, however, there are certain circumstances where it's just not practical or useful or in the public interest.

The second item deals with replacement workers. The RAC's reading of Bill 40 has led us to the conclusion that there has been no fundamental change in the position of the government of Ontario from the white paper with respect to the issue of replacement workers. None the less, the government acknowledges the need to examine the effect of the proposed restrictions on employers and specific sectors.

We believe it is important to alert you to the potential impact this legislation would have on the railway industry and the ability of the railroads to fulfil their obligations as common carriers—that is, their obligation under the National Transportation Act, 1987—without delay and with due care and diligence to receive, carry and deliver all traffic offered for carriage.

A specific example of this ripple effect could be Canadian National Railway Co and CP Rail, who operate GO Transit trains for the government of Ontario. Assume GO Transit ticket agents strike and in-house managers are not available to replace striking workers. The trains which are operated by CN and CP crews would not be able to operate, thus affecting thousands of commuting customers daily.

It is our experience that essential services must be maintained for the greater good of the public. The amendments as proposed would make the provision of essential services to the public of Ontario by struck employers next to impossible.

In introducing this bill, the government has cited the experience in the province of Quebec with respect to restrictions on the use of replacement workers. However, the exceptions to the replacement worker provisions proposed in section 73.2 are far more limited than the protection of essential services provided for under the Quebec Labour Code. The protection of essential services provision enables the government of Quebec to require the parties to negotiate what essential services must be provided and prohibits strike action until an agreement satisfactory to an essential services council is reached.

If I might just digress here, I'll give an example. In the event of a public transit strike—and there was a strike at the TTC, I think it was last year—in Quebec, the transit operator must operate the business during rush hours, to give you an example of how the essential services provision within the Quebec law works.

The RAC believes that proposed section 73.1 of the Labour Relations Act should be withdrawn. If, however, the government wishes to progress this matter, we recommend the following changes.

Proposed subsection 73.1(3) provides that a bargaining unit is considered to be on strike "if any employees in the bargaining unit are on strike or are locked out." I emphasize the word "any." This means that a union which, for strategic purposes, through use of selective or rotating strikes, withdraws its services from only a part of the operation of the work site could effectively prevent the employer from operating his entire work site by prohibiting him from replacing the striking workers. It is our position that, should this provision be enacted into law, it would cause a serious imbalance in the relative strengths of the parties.

What the provision would allow is for the union to make serious disruption to an employer's operation while continuing employment for a number of other individuals it represents, knowing that the employer is seriously hampered in continuing those parts of the operation struck by the union. It is our opinion, therefore, that if the no-replacement-worker provision is to be enacted into law, it not apply where only part of the work site is affected by the work stoppage. We believe that the employer should be permitted to provide replacement workers in instances where the union is engaging only in selective strikes.

We furthermore recommend that employers should be allowed to transfer employees from other work sites to replace workers on strike. The case for this is especially strong where there is a multilocal bargaining unit and where the union decides to selectively strike some work sites but not all. It is the opinion of the RAC that it is reasonable for the employer to counter the tactics of a union which is striking only part of the employer's operation for strategic purposes to provide replacement workers from other establishments which the union has chosen not to strike. It is our recommendation that this feature be added to the legislation.

It is the opinion of the RAC that subsection 73.1(4) violates the fundamental human rights of workers on strike by prohibiting such workers from offering their services to their employer to return to work. The legislation would

allow certain employees to perform the work of striking workers but would not allow the very individuals who hold the jobs from which they have withdrawn their services to voluntarily resume work on an individual basis. This, we believe, is inequitable. We recommend that subsection 73.1(4) of the proposed bill be deleted.

The third item we want to talk about is third-party picketing. The legislation would allow unrestricted picketing at or near third-party property to which the public ordinarily or customarily has access.

The concern to the RAC is that, by the very nature of our business, the public ordinarily has access to federal properties and facilities owned and operated by RAC members. Many of these facilities contain tenant businesses and employers. As a first concern, it is clear that unrestricted third-party picketing could frustrate the ability of RAC members to secure their property and, more importantly, personnel.

In addition, a broader concern is presented were the government's proposal to become law. RAC members could experience significant disruption of their operations resulting from picketing arising from labour disputes in which we have no interest or connection. As our services are of a national scope, interference with our operations poses the prospect of service interruptions for all Canadians. A labour dispute essentially local in nature could therefore have national implications. An example could be a strike involving a business located in Union Station, Toronto.

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While it is well settled that peaceful, primary picketing is *per se* lawful when its objective is the communication of information, it is true that this objective is sometimes superseded by a more obstructionist and confrontational philosophy. The RAC submits that it is inappropriate to impose legislation that would result in obstruction and confrontation at or near the property of innocent third parties.

It is difficult to reconcile the proposed amendment with the government's stated objective in its review of the act to promote harmonious labour relations and industrial peace. It would seem that this particular amendment could in fact create industrial strife.

In conclusion, these proposed amendments to the Ontario Labour Relations Act potentially have wider impact than simply affecting employers and trade unions in the province of Ontario. The concerns of mutual third parties may not have been adequately addressed in the proposed legislation.

We appreciate the opportunity to participate in this review process. We hope our submissions may be the basis for some guidance to the minister when reviewing Bill 40. This requires a delicate balancing of not only employer and employee rights but the rights of innocent third parties as well.

**The Chair:** Thank you, sir. Mr Offer, Mr McGuinty, four minutes, please.

**Mr McGuinty:** Thank you, gentlemen, for your presentation. I'm interested in the unique perspective you're

bringing to this, particularly this issue of short-line sales and the impact that successor rights, as provided under Bill 40, would have on them. To be honest with you, I didn't really understand when you explained them. I'm asking if you'd go over it again and just help me to better understand the implication.

**Mr Brazier:** Canadian National has been more active in this area than CP Rail, so maybe if you wanted just to address that, okay?

**Mr Blake Olson:** Essentially, the short-line sale is an alternative to abandonment. Typically, what the railways have been doing for the last 15 or 20 years is trying to divest some of the branch lines or subdivisions which have become no longer economical. Recognizing the long and tedious efforts to get abandonment proceedings under way, we've recognized that a lot of local communities, a lot of local industries, are very interested in keeping a railway alive, not only for the business on the line but also for the vitality of the community.

In that regard, we recognized something that had been taking place in the United States for several years—that is, a short-liner, what we've termed as a feeder network. Essentially, what the major Canadian railways would be doing is having main-line infrastructure with several feeder operations, much like you would see with Air Canada or Canadian Airlines and the various small feeder airlines that feed into the major terminals throughout the provinces and across Canada.

What we would endeavour to do is keep these branch lines open through a smaller operator who can afford to operate a small line, not necessarily having to finance a big infrastructure such as CN—we have 25,000 miles of track—and also as an alternative to abandonment under those circumstances.

**Mr McGuinty:** Who would the purchasers of these short-line sales normally be, then? A smaller operator?

**Mr Olson:** Usually, it's a smaller operator. I guess it's a coincidence, but the first short-line railway in Ontario has its grand opening tonight in Goderich. It's the Goderich-Exeter Railway Co. Railtex is the owner of that company and it's from San Antonio, Texas. Railtex has 18 short-line operations in the United States, and the Goderich-Exeter Railway Co in Canada was number 19 for them. They're currently bidding for another short-line operation in Nova Scotia, which would make it number 20.

Essentially, it's a small operator that attempts to purchase a line and run a small business—in fact, grow the business. In the case of Railtex, it has increased its traffic in the United States on those short lines, from a line that otherwise would have probably been abandoned, by over 40%.

**Mr Turnbull:** Gentlemen, I am the transportation critic for the Progressive Conservative Party. I am well aware of your concerns. It seems to me that at a time when everybody is so concerned, and rightly so, with protecting our environment—and we know the benefits of rail transportation—we should be doing everything possible to encourage these branch lines staying open. You have very well put the case that the alternative is abandonment.



Let's be pragmatic about this. Let's look at the time between now and the next election because then, I think, we'll have other legislation after that. But during that time, gentlemen, what sort of miles of branch lines might be sold off or abandoned if this goes through and you're not able to restructure the nature of these operations?

**Mr Olson:** In Ontario right now, with Canadian National, we have some 800 miles of trackage through communities. At this point in time we have an initiative under way to sell five further lines within the province of Ontario. The whole process, with the various legislative requirements, takes approximately 18 months to two years, so of course our interest in this bill is very important to us. Yes, we have about 800 miles on CN.

**Mr Brazier:** I was just going to say on behalf of CP, I can't be quite as specific, but there are specific lines, some within Ontario and some outside Ontario, where CP Rail at this moment is engaged in discussions with potential short-line operators. It's impossible, though, to say if any of these will come to fruition between now and the next election.

**Mr Turnbull:** It's my understanding that in fact these short-line operations in the US have been highly successful in the sense that the employees have a tremendous sense of identification with the operation. In fact, the person who's driving an engine will probably have a business card because he wants to try to get some business and he feels totally involved in the operation.

I suppose my friends across the floor would have the concern, and I understand where they're coming from, that jobs will be eliminated in streamlining these operations. Do we have any alternative in this time of rationalization to that kind of streamlining, or will they go by the board unless we can get that?

**Mr Brazier:** Speaking on behalf of CP Rail specifically, the lines I am familiar with, where the company is in the process of discussing potential short-line operation, the only alternative is abandonment. There's not an alternative at CP Rail to continue to operate. The alternative is either to get a short-line operator or complete abandonment.

**Mr Turnbull:** So the jobs will be gone.

**Mr Brazier:** Either all the jobs will be gone or some of the jobs will be saved because, as we indicated in the submission, obviously the short-line operator needs employees to operate the business.

**The Chair:** Mr Hayes, four minutes.

**Mr Hayes:** I'll be very quick and I'd like Ms Murdock to get a chance. I compliment you on your presentation here. I see where you have actually come up with some suggestions and have not just been totally critical.

I did notice the one part where you're talking about the legislation in Quebec, where the Quebec government requires "the parties to negotiate what essential services" and which essential services "must be provided and prohibits strike action until an agreement satisfactory to an essential services council is reached." I've heard other employers who come in here who have stated, "That's not negotiable on how we're going to deal, whether it be health and safety or services." You are indicating that you feel both

parties could sit down and negotiate on conditions, on what services or what workers may be allowed to continue working during a strike.

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**Mr Brazier:** Under the Quebec legislation, the parties of course are given the option of negotiating the terms and who will work and what has to remain open under the circumstances. The example I gave, which wouldn't be covered the way I read Bill 40, is a municipal transit service. For example, it must operate during rush-hour. That's a requirement under the Quebec law. The parties to the agreement sit down and negotiate, obviously, who's actually going to be running, say, the bus service or the Metro service or whatever it is. However, this needs the approval of the essential services council, because it has the final say as to what constitutes an essential service and whether or not the proposal of the parties meets the requirements of the law.

I think everybody in this room would agree that if the parties can hammer out the mechanism by which the essential service is retained and the circumstances under which it is retained, it's obviously better than some government body imposing it.

**The Chair:** Ms Murdock.

**Ms Murdock:** Thank you, Mr Chair.

**The Chair:** Thank Mr Hayes.

**Ms Murdock:** And Mr Hayes.

**The Chair:** After all, he could have used up all the four minutes for himself.

**Ms Murdock:** Don't you use up any of my time.

Actually, I taught school in the bush at the junction of the Algoma Central Railway and Canadian Pacific Railway lines for three years and only had rail transportation to use, so I got to know both operations fairly well.

My question is related to the inclusion of the rewording of subsection 64.1(3) in relation to involving a fragment of the business of the predecessor employer and where the essential nature of the business has changed. I noticed you were here for the previous presenters, where they were talking about successor rights in relation to foodservices and retail food operations.

As soon as I read that, my immediate thought was fragment of the business being utilized in another industry, other than rail and short-line because I understand the distinction you're making, saying that if you didn't sell, say, all of the property of the previous employer in the foodservices example they had used—how that section, the way you've worded it, would impinge upon them. Then the other thing is the use of the word "and" instead of "or" in that.

**Mr Brazier:** First of all, what we are proposing in section 64.1—don't get me wrong, I'm not going to take time just to review the bill, but certainly what we're proposing would only apply in those paragraphs that deal with a federal-to-provincial sale. That's one thing.

Second, yes, I agree, the principle applies too. Presumably, using the example from the union that was here before us from the foodservices industry, you could have a

chain of supermarkets, and I guess if one supermarket is sold off, is that a fragmentation? I realize that the issue is there. I'm not trying to discount it.

Now what I didn't read, but it's included in our main submission, in the bigger submission which you all have copies of, is that by putting these words in, we think they were only following what the general rule is by labour relations boards across the country already, and that is, for successor rights to work, the essential nature of the business has to remain.

Of course, we're only proposing it for federal to provincial. Ontario's the only province where this has ever been considered before. I recognize that it could have implications if it were in the broader area.

I can't speak for other industries, but certainly we think the problems we have maybe give us a bit of a uniqueness. We are federally regulated because the Constitution says we're needed for the better good of Canada, or two or more provinces. I'm not trying to say we're better than other industries, but we're given some kind of constitutional status.

Certainly, the main carriers, CN and CP, are transcontinental in scope and I think we made persuasive arguments to show that local strikes that may affect a few employees, say, 10 of the employees in Union Station in Toronto, could actually disrupt the operations of a transcontinental passenger service, so that's the kind of thing we're concerned about.

We recognize, though, that maybe unions might have some concern if this thing was given broad application beyond what we're proposing, but we think we've got kind of a unique situation here. Where you go from federal to provincial it's somewhat different than, you know, sort of a provincial one, a provincially regulated industry being split up. We think we've got unique problems and we're not making proposals here for broader application. But since the government has proposed that there be federal to provincial successor rights, we think it should be given what we think is proper application.

**The Chair:** On behalf of the committee, I want to thank the Railway Association of Canada for its participation in this committee's business. You've provided a novel perspective which had not been discussed with us before during the course of the committee's review of Bill 40. We're grateful to you for that and for your time and interest. We apologize for the late sitting in the evening. Thank you, gentlemen.

**Mr Turnbull:** I have a motion, Mr Chairman—I've got the name of the gentleman from last night—that Mr Peter Kirkby be now heard, given the fact that we're allowed to sit until 9 o'clock. Can I have some discussion points on this?

**The Chair:** Wait a minute. You've moved a motion?

**Mr Turnbull:** Yes.

**The Chair:** That motion has been moved. Fine, speak to it.

**Mr Turnbull:** Just a few quick points.

**The Chair:** Mr Huget?

**Mr Turnbull:** Mr Kirkby has—

**The Chair:** No, hold on a minute. Mr Huget?

**Mr Huget:** Is that motion in order, Mr Chairman? I believe we have a motion on the floor.

**The Chair:** There was a motion presented by Mr Offer earlier today, which has been deferred to the point in time when the last submission in tomorrow's morning sitting is heard.

Mr Huget argues that Mr Turnbull's motion is out of order. Mr Huget would argue that is because there's already a motion before the committee. I trust that Mr Turnbull would argue in response that that previous motion of Mr Offer's isn't before the committee, because it was deferred until 12 noon. Is that what you're arguing?

**Mr Turnbull:** Precisely.

**Mrs Marland:** We had hoped you would say that, as Chairman.

**The Chair:** Well, I was hoping I wouldn't have to think that up, but I trust that would be the counterargument.

**Mrs Marland:** That's the Chairman's ruling.

**The Chair:** In view of that, I appreciate your concern about the motion being in order, but I'm satisfied that the motion is in order, because Mr Offer's motion is not before the committee until 12 noon tomorrow.

**Mr Turnbull:** Thank you, Mr Chairman.

I will be extremely brief. I believe, from the brief that was distributed to us last night by Mr Kirkby, that he has a unique point of view that has not been heard by this committee to date. The committee is mandated to sit until 9 o'clock in the evening. This gentleman is not, as Mr Huget was suggesting, a walk-on. In point of fact, many weeks ago, apparently, he requested that he have permission to speak. He has not been granted that time. There is an available time slot.

Bob Rae, on taking the oath of office, said that his would be an accessible government which was open. I ask that it be open now and that we hear this rather unique point of view. I put the question, Mr Chairman. I request that we put the question.

**The Chair:** As compared to the rules that were agreed upon in the House, there's no restriction on debate here.

**Mr Turnbull:** The reason I am doing that is we could eat up the time, Mr Chair, and then we don't get him on. I think the people of Ontario are entitled to hear this, rather than some silly debate.

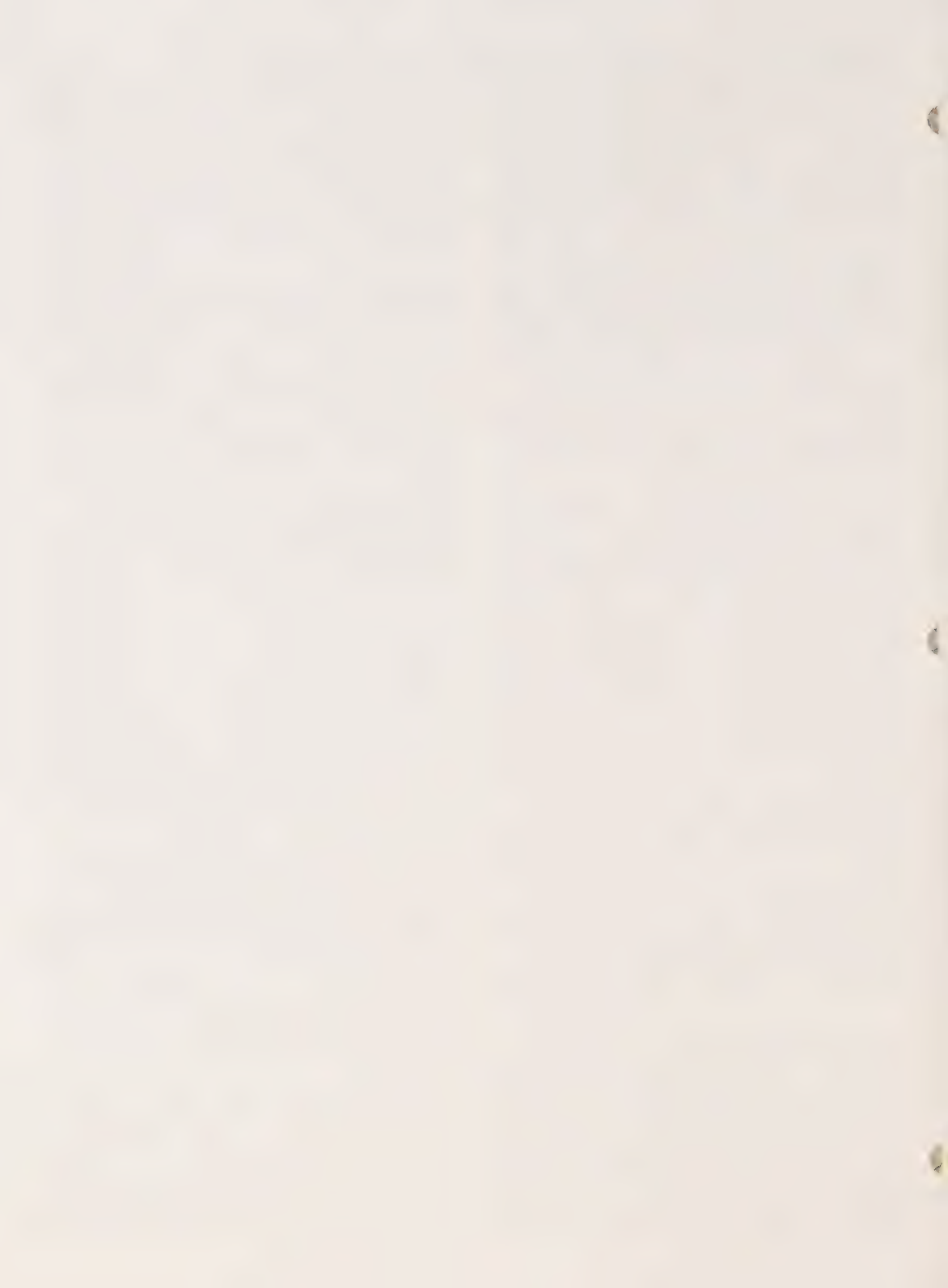
**The Chair:** Thank you, Mr Turnbull.

**Mr Huget:** The subcommittee agreed on a procedure in terms of dealing with witnesses, and we have faithfully followed that procedure for the last five weeks without exception. The subcommittee agreed that there would be no walk-on presentations, and there is not unanimous consent to change the previous subcommittee agreement or the committee agreement.

**Mrs Marland:** I'm aware that the subcommittee agreed that this committee would sit until 9 o'clock and that it would sit for five weeks. In fact, they were only









**Substitutions / Membres remplaçants:**

- \*Hayes, Pat (Essex-Kent ND) for Mr Klopp
- \*Hope, Randy R. (Chatham-Kent ND) for Mr Dadamo
- \*Phillips, Gerry (Scarborough-Agincourt L) for Mr Conway
- \*Ward, Brad (Brantford ND) for Mr Waters
- \*Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan

\*In attendance / présents

**Also taking part / Autres participants et participantes:**

Marland, Margaret (Mississauga South/-Sud PC)

**Clerk pro tem / Greffier par intérim:** Decker, Todd

**Staff / Personnel:**

Anderson, Anne, research officer, Legislative Research Service  
Fenson, Avrum, research officer, Legislative Research Service

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- \***Vice-Chair / Vice-Président:** Huget, Bob (Sarnia ND)
- Conway, Sean G. (Renfrew North/-Nord L)
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- Klopp, Paul (Huron ND)
- \*McGuinty, Dalton (Ottawa South/-Sud L)
- \*Murdock, Sharon (Sudbury ND)
- \*Offer, Steven (Mississauga North/-Nord L)
- \*Turnbull, David (York Mills PC)
- Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)
- \*Wood, Len (Cochrane North/-Nord ND)

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## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 3 September 1992

# Journal des débats (Hansard)

Jeudi 3 septembre 1992

## Standing committee on resources development

Labour Relations and  
Employment Statute Law  
Amendment Act, 1992

## Comité permanent du développement des ressources

Loi de 1992 modifiant des lois  
en ce qui a trait aux relations  
de travail et à l'emploi



Chair: Peter Kormos  
Clerk pro tem: Todd Decker

Président : Peter Kormos  
Greffier par intérim : Todd Decker

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 3 September 1992

The committee met at 1000 in room 151.

### LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992

### LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET A L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

### CANADIAN FEDERATION OF INDEPENDENT BUSINESS

**The Chair (Mr Peter Kormos):** It's 10 o'clock. We're ready to resume these hearings into Bill 40. The first participant is the Canadian Federation of Independent Business, if they'd please come forward, have a seat, tell us their names and titles, if any. We've received your package of materials. That'll be made an exhibit and form part of the record. Tell us what you will. Please try to save the last half of the half-hour for exchanges and dialogue. Go ahead.

**Ms Linda Ciglen:** My name is Linda Ciglen. I'm the director of provincial affairs for Ontario of the Canadian Federation of Independent Business. With me are Catherine Swift, our senior vice-president for provincial affairs, and Michel Décary, our vice-president for Quebec. Mr Décary is here particularly because there's been so much misinformation and misrepresentation about the Quebec situation and we thought we'd inject some facts into this whole debate.

Never in the 20-year history of the Canadian Federation of Independent Business have we seen legislation that's so potentially damaging for this province introduced by an Ontario government. This proposed labour legislation not only has provincial implications but ripples far beyond Ontario's borders to have harmful effects throughout Canada. In blunt language its message is: "Warning! Invest, start a business, take up residence or accept a job in Ontario at your own risk!"

Much has been written and said about the government's proposed amendments to the Labour Relations Act and their various packaging, and today's allotment of time in no way allows us to get into the concerns in any kind of comprehensive manner. We did submit a very lengthy brief to the Minister of Labour when he was touring the province in February and many of our members' concerns are already contained in that.

Given the limited amount of standing committee hearing time which the government has allowed on this issue, our presentation today will focus primarily on three areas, economic impact, Bill 40's outrageous curtailment of indi-

vidual rights and the Quebec situation. I'm going to turn it over to Catherine to talk about the economic impact.

**Ms Catherine Swift:** The largest concern of the small business community with this legislation is really the overall macroeconomic impact. As you probably know, the vast majority of small firms are not organized, and given that about 80% of them have less than 20 employees in this province, the likelihood of organization is rather slim, but the overall macro-impact and the effect that has on every business in the province, notably small business, is of serious concern.

As we've said many times, and as many of you may already know, small businesses, indeed those firms with less than 20 employees, have created over 80% of the new jobs in the Canadian economy and the Ontario economy over the last 10 to 12 years. This job-creating record is naturally seriously threatened by these legislative proposals.

The amount of concern small businesses in Ontario are having about the proposed labour law amendments can't be overstated. Indeed on one of our regular surveys we do with our members we found provincial labour laws shot up to the number three ranking in terms of overall problems facing independent business, and this is historically very unusual.

The total tax burden and government regulation and paperwork, which are perennial number one and number two concerns of small business, were almost eclipsed by labour law, again an unprecedented situation with surveying we've been doing for 20 years.

When we look at the comparison of survey results across provinces, the results are even more astounding. Ontario stands out above all other provinces as an area of major concern on the labour law issue.

Another survey that we did a few months ago and that we're going to be repeating in the next month or so—we call it our Hard Facts Survey—also showed the impact of the concern over the labour legislation. This survey looks at employment and investment projections of businesses, and what we found was that over the two-year period from 1990 to 1992 small and medium-sized firms in Ontario cut their full-time workforce by over 50% more than the rest of the country.

Of course we had recession, of course we had other problems happening that would have affected the labour force, but we found the results in Ontario were dramatically different than elsewhere in the country. Ontario firms reported considerably larger reductions in both full- and part-time staff during the life of this particular government than was the case anywhere else in the country.

The problem we also see which is very worrisome is that this process of cutting staff is still in progress in Ontario and this is not the case elsewhere in the country. Small firms in Ontario plan further cutbacks this year,

we've been told, and we'll be confirming that and quantifying it later this year, whereas what we found elsewhere in Canada was that essentially the haemorrhaging had stopped and things were flat or even improving a bit in some other jurisdictions. So the results from Ontario stood out by their very negative nature.

As we know, apologists for Bill 40 continue to deny any possible connection between this legislation and job losses, but again our members have made this connection explicit. What we found again in this survey was that over half of members felt the one thing that would prompt them to take on more staff in the next year or so was more confidence in the provincial government and again this result stood out dramatically among those from other provinces.

From the comments, letters, phone calls, faxes—all communication that we've been getting from our small business members in Ontario—it is clear that our members' foremost concern is the overall economic impact Bill 40 will have on our struggling Ontario.

Our members are unable to understand the government's persistent refusal to conduct an economic impact study. Business people would never go ahead with such a dramatic change in legislation without conducting some type of analysis. In fact they would be more likely to suspect the government of bad faith than of such foolishness, and many believe that an economic impact study has indeed been performed by the Ministry of Industry, Trade and Technology which confirms the business community's worst fears, about a quarter of a million lost jobs. This is of course why this study has not come to light, although it's been greatly rumoured.

It's very insulting to the small firms of Ontario, these hardworking, job-creating engines of growth of the Ontario economy, to dismiss their deeply felt concerns as scaremongering. The truth is that Ontario's small businesses are truly scared and would not be expressing these views if they felt otherwise.

I'd like to turn to Linda again to discuss the whole question of curtailment of democratic rights.

**Ms Ciglen:** Besides the negative economic impact, Bill 40 institutionalizes a massive infringement of the rights and freedoms of individual Ontarians, particularly individual working men and women. Unions' powers and rights are being increased at the expense of the rights of Ontario workers. This violation of the principles of democracy is all the more shocking coming from a party that has embedded in its name the word "democratic." If the governing party were a business, it could be prosecuted for misleading advertising.

Individual workers are not given any right to full disclosure of a union's constitution, dues structure or labour relations history during the union's organizing campaign. This is completely opposite to the trend in consumer protection law, which is towards more and fuller disclosure. Banks and trust companies are required by law to fully disclose the cost of credit. Manufacturers must print warning labels on their packages, yet unions are given a favoured position among all other purveyors of goods and services and potential consumers of union services are deprived of

their basic consumer right to full and fair disclosure before making their purchase decision.

Bill 40 enshrines another denial of basic consumer rights. In making a decision on unionization, which profoundly affects an individual's livelihood, a worker will have less protection than a consumer dealing with a door-to-door salesperson who gets a three-day grace period to change his or her mind. Without a secret ballot vote to ensure that the free choice of workers is respected, the right to change one's mind becomes essential.

Beyond the deprivation of basic consumer rights, this pales besides the violation of basic democratic rights contained in Bill 40. Foremost among these is that there is no right to a supervised secret ballot vote to decide whether a union should be certified or a strike mandate given. Workers do not have the opportunity to exercise their choice in privacy, unhampered by peer or other pressure, a right which is the cornerstone of our democracy.

The fairest and most accurate way to permit employees to exercise their true and free choice is to permit open discussion of the implications of unionization, require unions to disclose the cost of joining, the facts on what a union has secured for employees of similar companies, and to hold a supervised secret ballot vote.

It's interesting that the one labour leader who has come out and said that a secret ballot vote is a possibility is Gord Wilson, and we certainly applaud his leadership in this arena and suggest that the government take this seriously. He has specified that a secret ballot vote would be acceptable if it were the day after the application for certification. The only challenge would be the logistical nightmare that would be the result of following this procedure with only a one-day window. CFIB recommends that this secret ballot provision be instituted, as Gord Wilson has offered, with the reasonable change of an expeditious time frame to ensure efficiency and security in the secret ballot vote.

#### 1010

Worst of all, Bill 40 takes away a worker's essential right to choose whether or not to go on strike when the union leadership calls a strike. A worker's individual right to decide whether to strike or to work allows each worker to assess his or her own financial situation and degree of support for the union position. It is a powerful safeguard to hold the union accountable and make sure that it follows the wishes of the individual workers rather than imposing its will on them. Given that union staff salaries continue to be paid even when the union rank and file is out on strike, a worker's fundamental right to choose whether or not to support a strike call is a critical check and balance on the unbridled power of unions.

Bill 40 destroys this crucial safeguard and puts individual workers at the complete mercy of the union. They will no longer have the right to decide to oppose a union leader's strike call. A worker who feels the union leadership is being unreasonable or who simply cannot afford to go on strike loses his or her fundamental freedom of choice to continue to work and support his or her family.

It is shameful and hypocritical that members of the government party should permit such wholesale destruction of individual rights. The antidemocratic philosophy



that permeates Bill 40 is so pervasive that this committee should recommend to the government, in the name of democracy, that the bill be withdrawn.

Now I'd like to turn it over to Michel to talk about the Quebec situation.

**Mr Michel Décary:** On m'a demandé d'accompagner mes collègues de l'Ontario afin de vous dire quelques mots sur l'expérience du Québec dans le domaine des lois du travail, et plus spécifiquement en ce qui concerne la loi antibriseurs de grève.

Apparemment, vous regardez souvent et longtemps du côté du Québec, pour vous inspirer dans ce domaine. J'admets que dans plusieurs secteurs, le Québec peut être et mérite d'être une source d'inspiration, mais je vous jure que ce n'est pas le cas avec le sujet qui vous intéresse aujourd'hui, soit la loi interdisant aux employeurs de recourir à des travailleurs de remplacement.

The truth is that the grass is not greener in Quebec. Among other things, for several years the unemployment rate in my province has been significantly higher than in Ontario. Also, since our law was introduced, Quebec has lost nearly one million more days because of labour strife than has Ontario, and since 1978, Quebec has suffered 20% more strikes than this province. Investment in Quebec has also suffered compared to Ontario.

If you take, for example, the year 1991 when Ontario was really getting hammered by the recession, as bad as that situation was in Ontario last year, you still got 75% more investment dollars than we got in Quebec. That's not accidental. Outside investors can establish operations anywhere, and of course they prefer to locate in a jurisdiction where they don't have to face such an unbalanced risk to their company in the event of a strike.

Outside investment is not the only thing that drops when a government passes laws of this nature. Employment in firms that operate in more than one jurisdiction shifts from the affected area to another one that doesn't have that kind of law. In other words, when a strike occurs in your jurisdiction and you have facilities elsewhere, you shift production to that other area and, believe me, these jobs never come back.

That was the case for us in Quebec with companies like la Fonderie Saint-Croix in Lotbinière, which is near Quebec City, that lost tons of jobs. It was also the case with a company called IPL in Bellechasse. Quebec has learned the hard way that sometimes you can really kill your friends by trying to help them.

**Ms Ciglen:** In conclusion, if unions had a track record of being workplace partners, dedicated to improving productivity and increasing cooperation, the business community would be falling all over itself to have unions in their workplaces, and individual workers would be rushing to embrace them. If unions had an attractive package to offer employees, they would not require all of this unbalanced legislation in order to extend their presence in the workplace.

Unions are definitely appropriate for some firms in some circumstances, and in the best-case scenario they can achieve significant benefits for their members and also

improve a firm's productivity. However, in the worst-case scenario, unions all too often leave a trail of devastation and destruction in their wake: worsened productivity, workplace problems, failing competitiveness, labour strife and disheartened workers.

The best, most honest and most helpful way for unions to shore up their declining membership is, rather than have the government pass legislation to institute it, to offer workers value for their membership dues rather than having governments increase their numbers by legislated inequities.

Finally, this NDP government should adhere to the principles of democracy and not emulate the worst traits of unionism. This government has a responsibility to govern with wisdom, sensitivity and fairness for the benefit of the province as a whole and not gauge its thinking and actions to what most pleases the leaders of labour.

Thank you. We're pleased to entertain your questions.

**The Chair:** Five minutes per caucus, please.

**Mr Steven Offer (Mississauga North):** Thank you for your presentation. On this potentially last day of public hearings, on page 5 of your presentation, you drop what could only be referred to as a bombshell. You are saying that the Ministry of Industry, Trade and Technology has conducted an impact study that says there will be over 250,000 jobs lost. Could you please comment on that?

**Ms Swift:** There have been rumours circulating for the last couple of weeks that there is such a study that exists, and indeed, that the job losses concluded by this study were 250,000. I might note that there have been a number of studies conducted through the course of this legislative development by different groups, consulting firms and so on, that have come out with very similar numbers. So it is certainly in the ballpark of other studies that we've seen. I think it's not surprising that you wouldn't have seen this study come out of the government, given the findings, but that is the rumour out there.

There's also a rumour that the authors can probably be found out in Lake Ontario somewhere dropping copies into the middle of the lake, but that has been the rumour that has seemingly been leaked out of MITT, and naturally, we would be very interested in having that study published by the government.

**Mr Gerry Phillips (Scarborough-Agincourt):** We will pursue that aggressively. If that study exists, I can only assume we will have access to it and will ensure that study is publicly available before we make this decision. If it exists and the government chooses to hide it, we'll hold it accountable for that as well. I'll make the assumption that the government will table that document, if it does exist, before the Legislature deals with the final report, and I'll assume the government members will ensure that takes place. If they want to assure us that it doesn't exist, then that will also be acceptable.

We're now in the final day of five weeks of hearings. We've heard from the leadership, the labour movement, and they have universally condemned the business community for its response to the Labour Relations Act amendments. It's been very disappointing for me, because

yesterday the OPSEU president said that you are spoiled crybabies. The United Food and Commercial Workers last night said that you've launched—I don't mean you, I mean the business community in total—a vitriolic, offensive campaign consisting of misinformation, fearmongering etc.

My point is this: The Premier talks about a partnership between business and labour as the key to getting our economy going, but I think this process we're going through has been extremely divisive. I've heard from the labour movement that it has no trust in the business community. They think universally that you are fearmongering, that you are spoiled crybabies.

This law is going to pass. The timetable is set. We in the opposition have no choice. By Thanksgiving it's going to go through the Legislature. We will do our best to get significant amendments made, but I have no confidence that's going to happen. It's going to pass. Then the Premier is going to call for partnerships between business and labour as the key to success. Can you and your organization give us any indication of how likely that is to happen, having heard that labour has no confidence in the business community and having heard your concerns about this partnership?

**Ms Swift:** I guess the way we've viewed the reaction of labour to the very legitimate concerns of business simply speaks to why we have problems. There's been a very insulting response. No matter what studies, what very supportable, objective documentation, have been presented from all kinds of different sources, they've been dismissed as scaremongering and so on. So I think, unfortunately, the reaction of labour has shown why we have difficulties with a notion of partnership.

You're quite right, though: This process has been incredibly divisive. It has not been consultative. At this point most groups, including ours, have done several analyses and submissions of varying degrees on this issue. None of them has been taken into account one iota. There's been a bit of cosmetic tinkering through the processes the legislation has moved, but nothing substantive. So there's no question the business community has not been listened to one bit by this process. It has been totally one-sided.

You're quite right. I suspect there's a lot of rhetoric about partnership; there's a lot of talk with absolutely no backup, no action. That's been the case throughout. The confidence is zero by business in this government, and it is highly unfortunate. You can call it scaremongering, you can call it whatever you want, but when the decision-makers who are creating jobs and making investment tell you there's a serious problem, if you're government you're out of your mind if you don't think there is a serious problem.

1020

**Mrs Elizabeth Witmer (Waterloo North):** Just a point of information: You talked about the secret government-sponsored economic impact study. I'd just like to let you know that the Ontario PC party several weeks ago did file a request for this information under the Freedom of Information and Protection of Privacy Act, and we're

hopeful that we can at least get the numbers that you are speaking about. So we've already taken action on that front.

As you know, we have been very concerned about the loss of individual rights that are being proposed under Bill 40. In your presentation you mention the offer that was made by Gord Wilson concerning the secret ballot provision. I'd like to know under what circumstances that offer was made by Mr Wilson, and if you see this as a means that he's suggesting where we could bridge the gap between business and labour.

**Ms Ciglen:** I certainly hope so. He made that offer on a cable TV network in public. He was appearing with Judith Andrew of our organization on a TV talk show, and a question came in from one of the callers about the secret ballot vote. At that time he said that a secret ballot vote would be acceptable if it were to be held the day after the application for certification.

The problem with that is the logistical nightmares that would occur in trying to get a vote up and running that quickly. But certainly to do a secret ballot vote expeditiously would be in accordance with what our members want, so I think there may be some room for common ground there.

I understand he did not confirm that offer of his before this committee, that he still came out and said that a secret ballot vote was not acceptable, so I think he should definitely be called to account for that. He is the only labour leader who has made an attempt to bridge that gap in that way.

**Mrs Witmer:** I hope then the government will continue to look very seriously at that issue. I can assure you that many individuals are most eager to have that opportunity.

**Ms Ciglen:** His concern with votes seemed to be about the delays, so I think if, again—

**Mrs Witmer:** The timing.

**Ms Ciglen:** —we can get together and find a consensus on how to solve the delay problem, then we can work something out.

**Mrs Witmer:** I'd like to focus now on your withdrawal from the Ontario Training and Adjustment Board project in your protest over the labour relations proposals. What are the reasons behind your decision and how are they tied to labour law reform?

**Ms Ciglen:** That was a very agonizing decision. It was a very hard decision to make. The CFIB is so committed to training. We've been in the forefront of training issues, conducting a lot of research and involved in all the training initiatives. It was very hard for us to do.

But we felt that training and jobs are so intertwined—they're inextricably intertwined—that to continue on in a training initiative when legislation such as this was being proposed, which was going to be undermining the jobs, left us with the question: "Training for what? Training for what purpose if the jobs aren't going to be there?" We felt we needed to make that point so strongly to the Premier that there was no other way to do it but withdraw from OTAB.



**Mrs Witmer:** My final question is regarding the Quebec experience. As you know, oftentimes that experience is quoted as having been a very successful one, yet the indication you've given to us today is that it has actually had a very negative impact on the business climate in Quebec. Could you comment further as to what is happening, and how has this government misunderstood?

**Mr Décarie:** There are several aspects. Number one, since the legislation there has been an increase in the number of days lost through strikes, there has been an increase in the number of strikes, and the original purpose of the legislation, which was to reduce violence, was not met. There has been no drop in violence. Most of the violence that occurred in labour conflicts was in areas that were either in federal jurisdictions or violence which was against the property of the company. So the legislation has not had the desired impact.

Another thing we have found is that labour relations—and I'm sure you'll all agree—is a very delicate issue. Everybody wants labour peace. It's to everybody's interest. When you tip the balance a bit too much one way, then you create a very distorted situation.

What we had in Quebec—after our legislation was brought in, it was of course very well received by the unions, but that victory did not give satisfaction for very long. Then it went to other items: Major salary increases were accorded by the Quebec government, for example, for public sector workers and there was an escalation to the point that the Quebec government had to backtrack. The PQ government of the mid-1980s had started to backtrack in rolling back wages and also touching labour legislation such as our decree system. The number of decrees was reduced in Quebec, and that all started and continued a little bit after the arrival of the Bourassa government to bring back a balance. That's the delicate thing, to maintain that balance so every group doesn't have everything it wants, but it can live with the situation.

**Mr Bob Huget (Sarnia):** Thank you for your presentation. Let me say at the outset that, from the government side, we're certainly not aware of any secret studies. If it's a secret to everybody, it's a secret to us as well.

I understand your concerns. I understand the reason for your concerns in terms of business and conducting business in the province of Ontario and your need to ensure that you have a profitable operation when you run a business in this province. I have no quarrel with that whatsoever.

I do disagree on some of the principles that, I think, you insist are going to take place in this province. I'm very concerned about some of the statements your organization makes—some based on fact, some not based on fact—in terms of the damage this legislation could potentially do to the province of Ontario.

I want to ask you a very straightforward question. If this law was in place tomorrow afternoon, specifically what part of this law would damage your operation? What I mean by that is that this law removes the barriers a bit to allow people in Ontario—which they currently do have—to choose whether or not they want to, individually or

collectively, bargain with their employer for wages and benefits. If you're a unionized firm, I don't know how that's going to affect you. If you are a non-unionized firm with good relations with your employees, I still don't know how that's going to affect you, so I'd like from you some indication—and please avoid what I would consider to be rhetoric, with respect—please give me specifics about how this law is going to affect your operations.

**Ms Ciglen:** Again, the major concern is the macroeconomic impact. It is the chilling effect on investment and wealth creation in the province.

Small businesses are the niche players. They basically manage because they service other businesses. If large, foreign investors or other businesses are deciding they're not going to expand here in Ontario, that they're going to expand somewhere else, it's Ontario small firms that also lose out, because the customers aren't there for them to service and sell to. Our members are doing their best to expand their own bases, actually, out of Ontario, so that their markets are expanding, but a lot of them don't always have that choice. That's what they're primarily concerned about.

The investment decisions that are being made are definitely going to affect their viability, and they're on the edge right now. It's still a very bad situation out there for small business. They're really on the edge. The bankruptcy numbers are not really recovering. The facts we showed where Ontario firms are still cutting back on jobs—in other places in Canada, it has started to settle down a little—there are still cutbacks going on here. They're still really hurting here. This legislation does nothing to help.

1030

**Mr Huget:** In some of your documents, if you read between the lines, it appears that you at least portray, the opportunity for people to organize as being some kind of economic disaster for the province. Is the position of your federation and your members that of anti-organized labour, or what's your position on organized labour?

**Ms Ciglen:** No, not at all. As we said in our conclusions, unions are obviously appropriate in certain circumstances, definitely, and everyone should have the absolute freedom of choice whether or not to join a union. The point is that it is when the government comes in with imbalanced legislation that upsets us—Michel was talking about upsetting the delicate balance—that's where the problems arise.

**Mr Huget:** I'm not quarrelling with you, it's just that if indeed that's your position on organized labour, it's not portrayed that way in many of the things you distribute around the province. It's quite the opposite. It appears that the unionization process is going to threaten the economic situation in Ontario. That's what I read when I read these things.

**Ms Swift:** That's in the eye of the beholder.

**Mr Huget:** Oh, it is? I guess you and I should sit down and read this together.

**Ms Swift:** Our members don't perceive it that way at all, and those are the people we represent here.

**Mr Huget:** One final point.

**The Chair:** Mr Huget, if you can make it fast, you can do it. If you can't, you can't.

**Mr Huget:** I know you spent a lot of time and effort in developing an approach to this legislation and I want you to let me know whether or not this effort of yours has had any negative impact on investment in Ontario.

**Ms Swift:** Not at all. The notion that we should just be quiet and not tell you about the negative impacts that such a thing would have on the small business community, the major job creator in the province, is absolutely ludicrous. I can't imagine any group that would not point out those kinds of negative impacts if it was threatened, as we are, by this legislation.

**The Chair:** I want to say thank you to the Canadian Federation of Independent Business for participating in this process and for its eagerness to share its views with us. You've played an important role.

CARLA LIPSIG-MUMMÉ

**The Chair:** The next participant is the centre for research on work and society, if the spokesperson for that centre would please have a seat. Tell us your name, and title if you want to, if there is one, and proceed with your submissions.

**Dr Carla Lipsig-Mummé:** My name is Carla Lipsig-Mummé and I am the director of the centre for research on work and society at York University, but as is our custom, I am presenting this brief in my own name.

When I began to prepare materials for you, I thought that this was the last day of the hearings and that you had heard mostly everything from all over the province.

**Mr Randy R. Hope (Chatham-Kent):** Mr Chair, on a point of order: I would like to have a quorum call because there don't seem to be enough members here.

**The Chair:** Mr McGuinty is here, Mr Hayes is here, Mr Offer is here, Mr Ward is here, Mr Hope is here, Ms Murdock is here. Nobody else is here, but that constitutes a quorum—just. Go ahead, ma'am.

**Mr Hope:** Sorry for the interruption.

**Dr Lipsig-Mummé:** The document I have handed out, or that has been handed out, is divided into two parts. The first part, to page 5, is a summary. The second part, where I'll begin, is the arguments. I should say right from the outset that I am going to focus on some areas that have not been much focused on, and particularly I am concerned at the way the Quebec experience has just been misrepresented to you. I'm going to go into some detail on what is the larger picture in Quebec, perhaps to offset what you've just gotten, because what you've just gotten is not the picture in Quebec. I'm not going to start there, though.

Why labour reform now? Why go through this politically exhausting practice of reforming? Generally, governments only undertake this modernizing of labour law when it's impossible to avoid it, when the existing laws are shown to be incapable of dealing with a growing number of fundamental problems. Two of those problems we have seen over the last 10 years in Ontario are the following:

First, the majority of new jobs created since the early 1980s have been in part-time, contractual, domiciled or otherwise precarious employment. It's no accident that the proliferation of atypical employment situations and the growth in the numbers and impact of vulnerable workers is linked to the mushroom growth of employment in the weakly unionized service sector, the private service sector, and also in the garage and basement industrial sector.

Second of all, the late 1970s and 1980s have marked the increased recourse of businesses to workplace reorganization of many sorts, which they refer to as "flexibility" and which, in practice, has led to the marginalization of unions and a real decline in private sector union density, as well as, in many cases, the de-skilling of workers. All of this adds up to a return swing of the pendulum. After a generation of social commitment to deepening and broadening the security of working people, the new creativity of business has directed its energies to undoing a generation's work and replacing security with vulnerability, with marginality and with a kind of social Darwinian competitiveness.

Can the traditional methods of labour market regulation and labour legislation cope with these changes: the growth of mom-and-pop stores, the cancerous growth of precarious employment, contracting out, home working, electronic commuting? A number of societies have had to deal with these basic issues: The United States in 1978, Quebec in 1977 and Ontario in 1992.

If the labour market in Ontario seems to have changed beyond recognition, two of the reasons why this could push this government towards modernization might lead to the failure of the modernization effort.

First of all, when you reform a labour code it seems to me you do it because you can't avoid doing it; the problems have been festering for a very long period of time. The danger, when you do that, is that your labour law responds to the problems that have come up already. But if you're not careful, on the day that labour law reform package passes, it's going to be outmoded. So good labour law reform has to predict where the labour market is going for the next five years or maybe for the next 10 years. It's got to be very sure that it's going to be relevant.

The second reason that labour law reform sometimes fails has to do with the compromises that go on when you try to pass something politically.

For a real overhaul of the labour code to be effective, the package of reform proposals has to stay a package. Pierre-Marc Johnson, who was Minister of Labour and Manpower in Quebec when that province introduced its new labour code in 1977, told me recently that his government very deliberately produced a large and controversial package of law reform, and calculated very delicately which elements were essential in making the whole package work and which could be discarded in negotiation with opponents of the reform.

In Ontario, this government's very evident desire to respond to those who are opposed to all labour law reform—and let's not beat around the bush; the presentation I just heard said, "No labour law reform; keep it the way it is; the status quo works"—has led the government possibly to



discard key elements in its package, prematurely and maybe damagingly.

This is the starting point from which to evaluate the government's proposed reforms. In this context, we'll be making a threefold argument:

First, very simply, it's more than time that Ontario modernize its labour laws. To fail to do so would be an abdication, on the part of the government, of its responsibility to the community. Given all the changes I've mentioned in terms of the growth of precarious employment and the breakdown of security, a number of the reforms proposed in Bill 40 should be welcomed and endorsed, I hesitate to say unreservedly but almost unreservedly.

But second, there is another series of proposals in this bill, given the social priorities of the government, which were inadequately thought out, some that have holes in them which can be plugged, and then there are silences, issues that are not addressed.

The third argument we want to make here is that the Ontario business community, as we know, has spoken largely and intensely against the reforms proposed in Bill 40. I would submit that its opposition is based on old-fashioned and ultimately suicidal corporate individualism; in other words, each business thinking for itself and not for the good of the sector and not for the good of the provincial economy. The argument that strong unions and collectively organized employers make for economic health and growth is widely spread in the most healthy economies in the world, from Germany through Austria through Sweden and through Japan. Why does it not exist in Ontario? It is in everybody's collective interest, even the employer's, that solid, rooted unionism spread. Look at Germany.

Given the time constraints, the remainder of this submission is going to concentrate on the second and third arguments.

#### 1040

Over the decade since the recession of the early 1980s, the combination of the labour market changes we've talked about has led to a de facto deregulation of the labour market. There are certain issues in that de facto deregulation which cry out for statutory attention. For example, there is access to unionization for the growing number of precariously employed workers in stores, homes, offices and factories, workers whose employment status is no longer effectively protected by present labour law. Second of all, there is the need for statutory regulation of the diverse forms of workplace reorganization that our employers are introducing, sometimes during the life of a collective agreement. Then there is the need to civilize the unionization process.

Finally, something we haven't discussed at all, there is the need for both business and labour to tap into expert research and advice on an ongoing basis in their respective quests to become more effective actors. We're in a continental labour market and a continental economy. Both business and unions need upscaling desperately.

There are a number of proposals which need no revision, and those proposals are those which in fact respond correctly to the objectives set out. I guess I'm dividing it in three ways: (1) What are the objectives? Are they good?

(2) How well is the proposal thought out? (3) Is it tight enough, legally, in terms of its language?

The proposals to tighten first-contract arbitration, to allow composite bargaining units of full-time and part-time employees, to improve successor rights, particularly in the service sector, can be endorsed simply because their objective is to allow workers in vulnerable situations the right to unionize, because this touches the most vulnerable of workers—women, visible minorities, young workers and old workers—and because the language of the proposals allows them to carry out their objectives.

But there is another series of proposals, which while I can endorse the sense of them, have some dangerous holes in the language, haven't been seriously thought out enough and need to be worked on, and those are the ones I want to address myself to. Let me say ahead of time that I'm going to focus both on the Quebec situation and on Australia, because one of the proposals in the bill is based on an Australian experience, although it is implicit.

Let's start with the prohibition on replacement workers. Certainly, it's the most controversial of the proposals in the bill. The proposal we know is modelled on the Quebec Labour Code, which introduced a provision having similar objectives in 1977. It is to be noted, however, that the language in Quebec's 1977 anti-strikebreaker clause was sufficiently loose to cause the government all kinds of problems and to incite creative disregard—which is a polite word—for the law on the part of employers. Ultimately, it forced the government to rewrite the clause in 1983.

Since 1983, everybody would say those problems have been largely eradicated. One of the Conseil du patronat du Québec spokesmen said, "This is no longer an issue; it is a non-issue."

Three issues concerning Bill 40's anti-strikebreaker proposals concern us here: What is it meant to achieve? How well is it worded? How can the government tighten the proposals so as to avoid the problems that Quebec dealt with between 1977 and 1983?

The first, and to date the only, North American regulation forbidding strikebreakers was passed in Quebec in 1977, but when in 1990 the Ontario government began examining the Quebec law, its objective was the same as Quebec's had been 13 years earlier: to civilize labour-management relations. The indication of a prohibition against strikebreakers was meant, of course, to reduce the probability of protracted and possibly violent strikes or lockouts—we are never talking about lockouts, are we; let's mention lockouts as well—but it was also meant to redress the inequality of power between employer and union.

Unlike Quebec in the mid-1970s, the Ontario government had before it the bitter example of the American movement's failure in the late 1970s and 1980s to have permanent replacement workers banned. From this example, the Ontario government realized that banning strikebreakers would then have an impact on more than the strike or lockout. It would also civilize the organizing process and in some sense safeguard the right of workers to join unions in the first place by allowing workers to see

unions as vehicles for promoting their self-interest without inevitably embroiling them in overt conflict.

The American experience showed that when not forbidden to do so, employers turned as a matter of course to hiring replacement workers. Union members came to believe that to go out on strike meant the end of their jobs and of their unions, and in many cases they were not wrong. As soon as the workers walked out, the employer hired replacements. At the end of a stipulated period of time, he would ask the board to see whether his workers continued to want to be represented by a union. But the workers polled were the replacement workers whose jobs depended on the defeat of the union. So in cases where strikebreakers could be used, they were used, and to go on strike meant the union was dead in the enterprise.

This is economic intimidation. The concept of using democracy here is the purest hypocrisy. In turn, that equation of strike with job loss and union death led workers to fear joining a union in the first place. The introduction therefore of a prohibition on strikebreakers in Ontario is meant not only to deal with a strike, but to deal with the whole process of access to unionization. The proposal is, as you can see I'm going to say, to be commended.

While it's understandable that employers, sometimes simplistic in their reactions, see this law as a terrible threat, the US experience, coupled with Quebec's decade of successful use of the prohibition, tells us that just the opposite is true.

While it would be an exaggeration to claim that the Quebec business community has come to love the anti-scab law, the Conseil du patronat du Québec, the principle political arm for the Quebec business community, acknowledges that no single one of its affiliated businesses has blamed the anti-scab law for a plant or company closure since 1977, and while Ghislain Dufour, the president of the Conseil du patronat du Québec, does not like the law—the citations are available were necessary—he recently said that in certain cases it has been useful.

Let me give you a statistic as well: Marché du travail, Québec. Since 1977, when the law passed, no single year has had as many strikes and lockouts as were had in the five years before the law was passed in Quebec. It is the purest intellectual game to try to compare Quebec's statistics with Ontario's statistics. As well, compare the fact that unionization rates are lower in Quebec than in Ontario by almost 10%. You're looking at historical differences. The strike and lockout statistics, days lost, have never been as high in all the years since the law was passed as they were in the five years before the law.

What preoccupies me, however, with this proposal is not its objectives, but its wording. For example, the prohibition against transferring in, in certain categories of workers, paragraph 73.1(6)2, allows a creative employer to avoid the prohibition by tinkering with the timing of the transfer in. The prohibition against transferring out work in a strike or lockout situation might encourage the use of contractors. In Quebec, between 1977 and 1983, the government found that creative employers established outside "phantom units" whose only purpose was to receive work if a strike was declared.

Equally, in section 73.2, which deals with the permitted use of specified replacement workers, the wording invites misuse. Minimally, some specification of which industries are involved and a tighter delineation of the situations which would allow the employer to use specified replacement workers should be included in the language.

Finally, the proposals do not deal sufficiently with enforcement.

The next point is the establishment of an advisory service. This proposal, which is part I of the bill, has not attracted a lot of attention, but I think it could be of enormous potential value. What it says in the bill is that the Ministry of Labour is given the power to establish a service "to assist employers, trade unions and employees to respond to changes in the workforce, in technology and in the economy."

But beyond specifying that the mandate of this service focuses on several areas, nothing in it tells us what the resources are to be, how interventionist it will be permitted to be and how the service is to work. I think we have to assume that this provision reflects an as yet embryonic project, but it is worthy to be fleshed out.

It has been clearly inspired by the Australian experience since 1983. When Labour won the election, it looked coldly and soberly at the state of the national economy and said: "We are going to have to compete in a very tough global market. We're going to have to compete, and neither the culture of our unions nor the culture of our employers is modern enough." So in Australia, the government created services both for business and for unions which would help them in massively upskilling. They put money into it—the dirty words: "They put money into it." They created a trade development corporation for the companies, they created workplace innovation schemes etc. Time doesn't permit me to go into it, but some of those details are in the document. I think if the government is interested and concerned, it should really flesh out this advisory service.

Finally, the question of silences. This bill does not really deal with the need, the imploding labour market in Ontario, the breakdown of regular work, the fact that what we used to call atypical work isn't atypical at all. The mass of workers, between 60% and 70% of Ontario workers, fall outside effective regulation by ordinary labour laws because of how and where they're employed.

The government flirted with the idea of looking at sectoral bargaining, and then for some reason backed away from it. What I want to suggest—and there are more details in the written brief—is that if the government is interested in being relevant five and 10 years from now with this labour law reform, it's going to have to establish a task force on broader-based or sectoral bargaining which is going to look at the fact that we have moved beyond the Wagner Act model and we can't tinker with it any more.

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**The Chair:** Thank you. Ms Witmer, five minutes, please.

**Ms Witmer:** Much obviously is being made of the fact that the Quebec association decided not to proceed with the charter challenge to the Quebec law banning



replacement workers. However, I think it's important that we share all the facts here. We just had a presentation from CFIB and I'd like to read from their presentation:

"However, the conseil stated clearly that it is not abandoning its right to challenge the law. It decided not to proceed at this time because the major Quebec unions explicitly stated that to do so would trigger a severe deterioration in the current labour relations climate in Quebec, which the conseil felt the economy could ill afford. The conseil also referred to the slowness of the courts.... The conseil reiterated its firm stand that the ban on replacement workers squarely violates the fundamental right of an employer to pursue its operations during a strike and that it therefore constrains the right to private property implicitly protected by the charter."

In conclusion, this is what they did say, and I think this needs to go on the record:

"The fact that the conseil's thoughtful, long-range decision, made in a spirit of cooperation, was characterized by members of the governing party as a capitulation demonstrates exactly the combative adversarial attitude that permeates the world of collective bargaining and raises so much trepidation in the hearts of employers."

We heard from the gentleman who appeared before you about the high number of lost strike days, the loss of investment in the province of Quebec, and we have certainly heard from them that all is not well and that shortly after the law was passed bankruptcies in Quebec began to outpace Ontario bankruptcies. So I can tell you, according to the gentleman who himself is a resident of Quebec and who met yesterday with the conseil, I believe the example that you gave of its not being concerned is exaggerated.

**Dr Lipsig-Mummé:** No, I didn't say they weren't concerned. I said nobody said they loved the law, but they had a hotly debated, divisive council where they decided in some cases it is useful. I made very clear to say that they don't love the law, but they have lived with it and they have said it is useful.

**Mrs Witmer:** They were forced to live with it.

**Dr Lipsig-Mummé:** Now, when you heard about the bankruptcies and when you heard about the strike days lost, it's simply wrong. It's incorrect from the *Marché du travail* statistics. You can take the years prior to 1977 and then after 1977. That's documented. I think it's a question of whether you want to see the glass as three quarters full or one quarter empty, and you are choosing one way.

**Mrs Witmer:** I would suggest that you study the facts yourself.

**The Chair:** Ms Witmer, you have two more minutes.

**Mrs Witmer:** No, go ahead.

**Mr Hope:** Thank you for the presentation and thank you for the clarification for the general public which have just heard the previous presentation about the Quebec law. You very clearly cleared that up for us.

I'd just like to quote currently today from one of my local papers: "The economy keeps rolling due to the efforts of the labour force. The people in the labour force are the backbones of any company and any city." That was a comment made by our economic development officer. I guess

when I see this kind of presentation that is being made, it's one that is not helping my community which is being affected.

It's also quoted in here by the national economy, which is called the free trade agreement, which is having a major impact. But he also goes on to make sure that the companies are jumping on stream hiring new people because of the Jobs Ontario Training fund which this government is doing to promote jobs.

I was interested where you're saying that we have to expand and go further, where you're talking about Australia. I was just wondering about your viewpoints dealing with education in itself of our younger people to be more of a balance. Instead of businessizing them in our education system, we should also be labourizing them because most of them come out of the school system as labourers. What are your viewpoints on that?

**Dr Lipsig-Mummé:** That's a very tall order, asking whether the higher education system should become more technically oriented. Do I understand that?

**Mr Hope:** Yes.

**Dr Lipsig-Mummé:** It is certainly valuable that the education system produce well and highly trained people for every kind of job, that there be excellent apprenticeship programs and that there be an attitude towards permanent learning, if you will, for workers to continue to upskill themselves all the way through.

When I look at the Australian situation, what I see is that the government said, "Everybody is going to have to learn and learn a lot"—union leadership, workers, company leadership, managers—"and we're going to have to become, if you will, high value added niche players because we are in an awkward situation." They put creative energies into making that possible, both carrot and stick energies. I'd like to see that kind of thing happen here.

**Mr Hope:** What really amazes me is the presentation that was done before you. They say there is no political alignment with them. When I see an article of this nature, you know, by the independent business association speaking on behalf of the business community—they talk about unions not being democratic. When I see these kinds of things and then I read what my local paper has to say about some of our local businesses wanting to expand, hiring jobs, looking at the skill-added value, I'm asking myself, "Does this organization speak democratically for its members?"

**Dr Lipsig-Mummé:** I have to admit that I was surprised to hear the independent business association come out as the defender of the small worker against the big union, but I think this committee is a place where a lot of positions and views are going to be put and certain organizations are going to come with their political views. It's unavoidable. What concerned me terribly was almost an insulting assumption that you wouldn't know about Quebec and that one could get away with misrepresenting Quebec. That worries me when that's done.

**Mr Hope:** The other area I want to make very clear is that while we're hearing this kind of campaigning going on, again in the local paper which appeared in my riding, it

says, "Union-management relations continue to strengthen," says the president of the Chatham and District Labour Council." Unions are not getting into this type of campaign. They know we need to change our workforce and they're asking the business community to put down their political agendas and deal with the factual information of skill-added value and increasing our labour force to make sure we can compete in this competitive marketplace.

**Dr Lipsig-Mummé:** We have a mentality of corporate individualism here. We do not have a sectoral mentality, a mentality of developing economic sectors. We do not have a provincial mentality for the economy, each business for itself. The other things follow, I think, logically if unpleasantly.

**The Chair:** Mr Huget, very briefly.

**Mr Huget:** Thank you for your presentation. I had the opportunity in 1986 to go to Australia with a number of people from Canada and indeed most of the Commonwealth countries. The purpose of that exercise was to study some of the structural change that was taking place at that time in Australia around its industrial framework.

I got the view when I was there that the government has a very significant role to play in terms of forcing, if necessary, innovation and cooperation. I don't know how much progress has been made in Australia, but I think it's the legitimate role of government to do that. I see the Canadian government as acting more often than not as an enabler in terms of keeping the system the same.

**Mr Dalton McGuinty (Ottawa South):** Thank you for your presentation. We've heard during the course of the past five weeks from a number of people using other jurisdictions, I guess, as comparators. I've come to conclude I have to treat them all as rather suspect.

**Dr Lipsig-Mummé:** All of them?

**Mr McGuinty:** All of them. I think we've got to understand that what we're talking about here in terms of an economy is, there's an economic culture, all right, which is rather distinct in Ontario, quite distinct from what was found in Quebec and quite distinct in terms of what is found in the United States and in other jurisdictions throughout the world.

What you have to rely on, from my perspective of course, is what the people within this province are telling us, what their feelings are about this legislation, recognizing as well that the psychological factor is a very fundamental component in the economy. Witness the recession we're having today and the reluctance on the part of many of our consumers to spend, notwithstanding that they still have the income they had earlier.

You'll recall what Mark Twain said about statistics. There are three kinds of lies: lies, damned lies and statistics. So I'm not sure that your comparisons, just as other comparisons with other jurisdictions, really hold that much weight at the end of the day, and we've got to look to what some of the people on the front lines in this province are telling us. They are telling us they are afraid of Bill 40 and they are very much afraid of the impact it will have on our economy. I think it's unfair to dismiss all of those concerns

as being merely hysterical, without any foundation; in fact not based on any genuine sincere feeling.

**Dr Lipsig-Mummé:** Yes, I think there are some people who are afraid, and I wish that we had a vast amount more of data on the development of the labour market and the business community here up until this time. There are facts that, when you go to prepare a brief like this, aren't there and you'd like to have them, but there are a lot of voices we don't hear from. There are a lot of hidden voices.

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For example, let me tell you a story. My daughter is going into ninth grade. In the summer between her fifth and sixth grades she was trying to make plans with her little friend Lien, who is the child of a family of Southeast Asian immigrants, but Lien could make no plans that summer. Her mother sews in a garment factory and the whole family was home sewing all summer. Lien was between fifth and sixth grades, and the youngest child in the family who sewed all summer was between first and second grades. Lien had Sunday off because it was a religious family, but that's all Lien had. She was promised a transistor at the end of the summer; she was given her transistor. They sewed from the first grade to the sixth grade. Maybe we don't hear from those people who desperately want some kind of protection.

Let's also not forget something important. Every major enlightened law that is now on the books, from maternity leave through health benefits through vacation pay, came first by being negotiated in union contracts. So access to unionization is access to some kind of protection.

**Mr McGuinty:** I'll just make a brief comment and then my colleague here has a question. In fact we have heard from people in the garment worker sector and domestics as well, and one of the shortcomings in Bill 40 is that it will not address many of their concerns.

**The Chair:** One minute.

**Mr Offer:** I note that as a professor of labour studies you speak about the need to civilize the unionization process, making the choice free from intimidation and coercion. I don't think there is anybody who disagrees with you. As a professor and from your studies, do you believe there is ever an occasion where a union organizer may, wittingly or unwittingly, intimidate, coerce or misinform a worker while in the throes of a union campaign?

**Dr Lipsig-Mummé:** Would you define your word "intimidation"?

**Mr Offer:** Where the worker may feel that he or she is signing something that is something other than what it is, where he thinks there is a need to sign, where he thinks he is signing a card which will give him a vote, as opposed to the card itself being the vote, and it goes on and on. We've heard concerns—

**The Chair:** Do you want to respond to that?

**Dr Lipsig-Mummé:** I'd like to respond to that question. I think in unionization campaigns there is a possibility of intimidation from the employer and there is of course a



possibility of intimidation from the union. Sometimes that intimidation can be subtle; sometimes it isn't subtle at all.

Hopefully it doesn't happen often, but the employer who sits his workers down and says, "Now, you have every right to join a union, but you must know, when I calculate my costs, this is one of my oldest plants and it may close," is that intimidation? Is it there? Yes.

But when I said the need to civilize the unionization process, I meant—and we can look at strikes in the United States, because some of them are companies that also operate in Canada—what you have happening when a worker thinks about joining a union and says, "If we ever have to strike, I lose my job; there may be violence, because they're going to bring in strikebreakers," that's what I'm saying. The prohibition on strikebreakers civilizes the entire process from soup to nuts, from the beginning of the unionization process to lockouts and strikes, if that happens.

**The Chair:** I want to thank the Centre for Research on Work and Society and you, Ms Lipsig-Mummé, for your participation in this process. You've made a valuable contribution. I trust that those people who weren't here during your submission will read the Hansard transcript of what you had to say. Thank you kindly.

**Dr Lipsig-Mummé:** Merci bien et merci au comité.

#### NEWMARKET CHAMBER OF COMMERCE

**The Chair:** The next participant is the Newmarket Chamber of Commerce, if these people would please come, have a seat and tell us their names. We've got your written material, which will form an exhibit and be part of the record because of that. Your names, your titles, if any, if you want to, and proceed with what you want to say. Try to save the last half of the half-hour for exchanges and questions, because, as you can see, it's a very valuable part of what's happening here. Go ahead.

**Ms Debbie Allen-Cooke:** We just have one speaker. Heather's here just to help field questions later. My name is Debbie Allen-Cooke. I'm the second vice-president of the Newmarket Chamber of Commerce and a real estate broker with ReMax Omega Realty in Newmarket. With me is Heather Nicolson-Morrison, manager of the Newmarket Chamber of Commerce and a separate school trustee for Newmarket.

We are pleased to have this opportunity to speak directly to the committee about our concerns and objections to the government proposals. Newmarket is a member within the Ontario Chamber of Commerce, division 18, which is York region. In view of the number of requests to address the committee and the lack of representation from York region's business sector, we're here to express the concerns of our 350 business members and those of the following: East Gwillimbury, 125; Georgina, 103; Aurora, 539; Richmond Hill, 400; Vaughan, 600; Markham, 600; King township, 60, and Whitchurch-Stouffville, 150. In addition to this combined group of 2,927 business members, we also represent all the business enterprises in the region, with a combined workforce of 208,654 workers.

We are neither political scientists nor economic professionals and our knowledge of business and economic

issues is on a grass-roots or practical level. Our apprehensions are those of a group which always seems to be hardest hit by any form of government decision or change. As Canada enters into the global economy and as acts such as free trade give us access to a larger marketplace, it is essential that amendments such as you are proposing be adopted with much study and certainty.

While we sympathize with the historical need, genesis and motivation of unions to protect the workers of our province, York region is comprised of at least 75% small businesses, which also need a voice in government, an agency to speak out for them. The chambers of commerce and boards of trade did an advertising campaign in June and July of this year and have a responsibility to express the legitimate concerns of the businesses which responded, not all being chamber members.

What was most worrisome was the lack of information or knowledge to permit unbiased judgement or to measure the impact of this particular bill on their individual businesses. The issues of this bill are too complex to be given such a short period of consultation.

In our region, where business and employees have had relatively good relationships, this bill might become an unwieldy and confrontational element. Our major concerns are as follows: the union certification process, financial implications for smaller businesses, access to private premises, replacement workers, ability to organize and social impact.

Some background: The most rapidly growing industries in York region since 1981 are accommodation services, finance and real estate, retail trade and manufacturing. Relocated industries from out of the region were primarily those of construction, manufacturing and transportation. Part-time employment was more prevalent in the north portion of the region, accounting for almost one quarter of all jobs. The region is not dominated by large establishments.

According to Raymond Twinney, the mayor of Newmarket and regional councillor, these amendments, if passed, would be the "final nail in the coffin for manufacturing in this municipality. It is very competitive now and the businesses will no longer be able to compete."

Certification process: Mr Frank Stronach, who is the largest employer in the region, employing in excess of 10,000 workers, is concerned that the danger of this act is its potential to "suppress democracy." He believes "The world is not perfect. In reality, both employers and union leaders do not always work the best. Corporations do use pressure and intimidation, but so do labour leaders; neither must be tolerated. The solution," he believes, "is secret votes. The use of these ballots would also be used in the process of certification."

This bill could hinder the cooperative performance between employees and employers and in the long term would not be a service to labour, but will kill business with restrictions. No union or government can maintain jobs. Ontario must remain competitive, maintaining and attracting high-paying and skilled positions.

Forcible or imposed unionization is what could occur, which ultimately would be an abuse of personal rights.

The admission of petitions once a union has applied for certification would be prohibited and therefore prohibit employees' options of ever changing their minds.

Financial implications for smaller business: These amendments could adversely affect smaller businesses. Higher wages, more demands and the denial of the use of replacement workers could effectively close some businesses. When asked, based on his experience, how much of a financial float businesses have and how long they could survive if their doors were shut, Mr John Cormier, a manager of independent business for the Royal Bank, confirmed that seven out of 10 small businesses over the past five years are underfinanced.

Some owners have mortgaged their homes because there is a delay in funding or they simply do not have adequate funds to set up a business. If put in a strike position and unable to hire replacement workers, these operators will not have the financial resources to absorb the shock, especially after two years of this recessive economy. Like many Canadians who live from paycheque to paycheque, they have no reserves and their survival expectancy during a strike would be minimal.

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Mr John Kennedy, regional manager for the Bank of Montreal, when asked the same questions, responded that business reserves are very low and that the timing of a strike could demolish a business. For example, if a union struck at a retail employer's during late November or early December, the action could effectively destroy the year. Seasonal employers, those in construction and tourism, are also at risk.

In order to keep alive, employers would be forced to settle. These settlements would adversely affect the consumer. An example might be that during a strike there would be lessened competition and a natural increase in the cost to the consumer. This would then result in an increased cost of day-to-day business for the employer. To be denied the use of replacement workers during a strike tilts the delicate balance of bargaining power in labour disputes towards unions and will force employers to do anything to avoid a strike.

Mr Bruce Annan, publisher of the *Era/Banner* and the Liberal and vice-president of Metroland Printing, Publishing and Distributing Ltd, stated that Metroland has about 2,000 employees and that a strike vote by as few as 60 newsroom employees could put the remaining 1,940 people out of work and that publication of the struck papers would cease. The community readers and advertisers would look for alternatives. The bitter irony under the proposed changes could result in a strike paper, published by the employees who forced the shutdown.

Mr Annan's conclusion summarized that: "Those of us whose product is both local and perishable are faced with an impossible scenario: Concede to the union whatever it asks or go out of business. We simply can't function with that sort of gun to our heads."

Access to private premises: The protection of property rights is inherent in our laws. The amendments are so vague as to allow disruption of the public during strikes, and harassment of other employees and customers, even if

they are uninvolved. Unions will have the right to enter public malls or municipal buildings and picket in those areas. Would this public access include the Legislature, or perhaps a nuclear power plant? These results must be further researched before a final decision is made.

Reduction of picket line violence was one of the concerns of the minister and his staff, but what of the other forms of violence, like what was recently witnessed in Hamilton, involving the longshoremen?

Strike action is a right, and is meant to be informative. Striking, however, should not be able to shut down a business so it dies, nor should it adversely affect our neighbouring businesses. Mr Matthew Dunn, assistant general manager of the Upper Canada Mall, has serious concerns over the irreparable damage that could be caused to the economy if the amendments are accepted. Allowing unions to organize in an area like the mall would be perceived by the public as a possible intrusion. Quoting statistics from an independent survey done by Environics in October 1991, nearly three quarters, or 72%, of Ontarians said unions organizing retail workers should not be allowed, nor demonstrations by special-interest groups.

Replacement workers: What is the cost to society if fundamental services go on strike? What is an essential service? If groups such as sewage or water workers strike, are they to be replaced? How do we keep operating? Frank Bobesich, director of education for the York region separate school board and secretary-treasurer of the board, sees the amendments as "a very precipitous action, which is premature and possibly dangerous." He believes "We had better get a good fix on what an essential services is." At present, police and nurses are seen in that perspective, but what about school janitors? If they strike and cannot be replaced, after a few weeks a school could be shut down for health reasons alone. Taxpayers will simply not accept this.

It seems the principles of fairness and the balance of power will shift and curtail the ability for discussion between opposing groups.

Ability to organize: Chambers enrol a number of professionals, ie, lawyers and architects. While groups such as the Ontario Association of Architects agree in principle with the amendments, they see, as stated by Mr Brian Watkinson, deputy director of practice of the Ontario Association of Architects, that changes to the OLRA are unnecessary in their profession, but they are unable to assess the impact of these changes on their profession. They also believe that the proposed reforms will have a negative influence on the confidence of potential investors from both within and outside Ontario and, therefore, a negative impact on the industry as a whole.

To allow security guards to join the union of their choice has caused some concern. Mr Les Hunter, manager of a regional security and investigation company, believes that if security guards were allowed to unionize, they should only be permitted to organize a union under the company they work for. He perceives problems in cases where an employee of a security firm has joined a retailer's union, and if negotiation is needed during a strike, the union would be negotiating with the retailer, not the



security company. He also sees contractual problems with supplying security during a strike if one is unable to use replacement workers for striking security guards.

**Impact:** Ernst and Young's economic impact study, which was done for the Council of Ontario Construction Associations, contained the following disturbing figures: 295,000 jobs would be lost as a result of the proposed legislation; \$8.8 billion of investment would be lost over a five-year period, and implementation of the changes would cost \$8.3 million and require an additional 55 civil servants.

Eldred King, chairman for the region of York, implied the amendments could have a "detrimental effect to employment in the region." His is a philosophical approach. If these amendments are accepted, who is going to generate employment? Businesses which feel intimidated will close shop and others will simply not settle here. Can we survive economically with these conditions?

Some members believe these amendments will lead to a reduction of employees and an increase in consultants as a backlash to them. York region is suffering from a crisis in social service needs. A report titled *Addressing the Crisis in Human Services in York Region* was presented to the government by the community services council of York region in June 1991.

York region has an estimated population of 525,000 and is still growing. If the region is unable to attract new businesses and to support the expansion of its older business, or if there is a decline in business for any reason, the unemployment problem will reach disastrous levels. Job opportunities are essential to accommodate any type of social restructuring. Higher unemployment, coupled with fewer job opportunities, will entrap more people in the welfare cycle.

Do we really need this legislation? How will it make improvements for labour? Who is promoting these amendments? Will Ontario be perceived as a bad place to invest? Is the timing right for these changes?

The NDP was voted into power in Ontario because the people wanted change. Granted that this act is outdated and change to it is commendable, these proposed amendments are realistically disastrous and somewhat short-sighted. Past experience has demonstrated that the more government interjects itself in the marketplace, the more citizens lose jobs.

Businesses in York region simply request a slowdown in the process and that an independent economic impact study be undertaken. There should be open communication with the workers and business operators of this province, not just consultation on the discussion paper. Remember that if the people are given all the facts, they will vote for what is right.

**Mr Len Wood (Cochrane North):** Thank you very much for coming forward with your presentation. Along with some of the negative comments we've heard on Bill 40, in the *Toronto Star* this morning there was an article saying that in the Metro area, ReMax was saying resale of houses has gone up 41% in 1992 over August 1991, which is positive that things are moving a little bit, maybe not as fast as they should.

That's not really a question. I wanted to ask you basically, what would your feeling be if—anybody who has a business can belong to the chamber of commerce. Anybody who's a lawyer can pay lawyers' fees. What would be your reaction if anybody who comes out of school, out of university, would be allowed to join a union, and after a year, if they don't like it in the workforce, if they take a vote of 50% or 60% or 70%, to get rid of it, to decertify? Make it broad in Ontario that anybody who comes out, if there's concern with sexual harassment in the workforce, as one woman brought forward yesterday, health and safety, minority groups, more women involved—what would be your reaction if anybody could buy a membership and belong to the union and then, if they didn't like it after a year, take a vote in the workplace to get rid of it?

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**Ms Allen-Cooke:** I don't know that it would work. Most people when they come out of school have a reason to purchase a membership. They have finished courses and that type of thing. If it was specific to their profession, I'm sure that—there are unions everywhere, but I don't think the availability is there to vote it in and vote it out that easily.

**Mr Wood:** It happens with doctors. It happens with lawyers. Anybody can open up a store and buy a membership in the chamber of commerce and there are a lot of other organizations. If I want to buy a membership in the Conservative Party, which I probably won't, or the Liberal Party or the NDP, it's available to me. You go out and you pay your fee.

I'm just wondering what you think of that system. If there is sexual harassment in the workplace, as one woman brought out yesterday—severe, in a grocery store. She was given all the dirty jobs, night shift and everything. Finally, she found a union that would organize the place and get around that issue. I'm just curious as to why one sector of people wouldn't be allowed and other sectors are.

**Ms Heather Nicolson-Morrison:** Democratically, I think it would be better. If you want to choose, fine. If you choose to join a union, that's fine. But if you choose not to, you should still have that right. Nobody has to join a chamber of commerce. That's your choice.

**Mr Wood:** That's available now for unions as well. They don't have to join.

**Ms Nicolson-Morrison:** I'm answering your question. I was forced into a union when I first got out of university and I didn't like that because I didn't like the fact that I was being told that to work there I had to belong to a union. It's got to be your choice. But then I realize you could also say in your argument back to me, "Well, then, how can you partake of anything good the union can do for the employees?" That is an argument, but I feel that, democratically, if you choose not to belong to a union, you shouldn't have to.

**Mr Wood:** There are a number of reasons. There are four main reasons why some modest and minor amendments are being brought forward in Bill 40 and I'll just cover them briefly.

There have been major changes in the workplace and workforce since any major changes were made to the OLRA in 1975, which goes back quite a few years. It's promoting cooperation and partnership, reducing conflicts, streamlining the process and restricting the use of replacement workers on the site, which has led to fatalities and severe injuries, a lot of pain and suffering in the families on both sides, where you've had brothers and sisters who have been encouraged with bonuses to cross the picket line and cause fights.

In our opinion, these modest amendments or proposals being brought forward are going to answer some of the concerns of the people out there who have come forward in large numbers to give us all kinds of examples. They have no way of raising the issues with their bosses in the workplace. I'm just wondering what reaction to that—the group of people that we're saying should have some kind of a lever to deal with those issues.

**Ms Allen-Cooke:** I agree that in a very large corporation it's very difficult to find the boss, never mind to address any concerns, but in York region, as we indicated in our paper, we're over 75% smaller business and right now, up until today, have very good working relationships with most of the employer-employees. If they have a problem—take, for instance, Mr Frank Stronach. I'm sure most of you are familiar with the name. He has gone out of his way to do for his employees. They have medical, dental, day care, optical, pension. His company has a lot to offer. Sure, sometimes they don't all agree and one of his plants in Windsor is unionized, but a lot of them are not. He's still there. He will talk to his people.

In a larger corporation, I'm sure they have smaller heads you can deal with. I'm not saying that the union does not have a place in the workforce; I just think that with some of the amendments proposed there should be a longer study before it's brought in.

**Mr Offer:** Thank you for your presentation. I certainly am pleased that you brought forward the issue with respect to the impact on small business. I think that's an important aspect of these hearings. I think you should be aware that we're hearing concerns not just from the business community but from a variety of other areas. The Ontario Association of Children's Aid Societies has concerns with this legislation; school boards, municipalities, hydro services, all have concerns about this legislation and its impact on their being able to do what they're responsible for.

I appreciate your bringing forward these concerns. Certainly, I think it's important to key in on the small business aspect, because I think there are a lot of people who say that the small business sector is the sector that creates more new jobs in this province than anything else.

There is no one who would disagree with the fact that workers, if they wish, should have the right to choose to join a union. I don't think that's the issue. I think you've brought out the question that there should be a freedom of choice, a freedom to choose whether they wish or do not wish to join, free from intimidation and coercion. I'd like to get your thoughts on that area of the legislation.

**Ms Allen-Cooke:** I agree that they should have the choice, and given the choice, I think they will make the right decision, if they have all the information in front of them.

From the businesses we've spoken to—I can't speak from a personal point of view because that's not why I'm here—I think the concern is that if a group of five or 10 decide they wish to form a union within a small retail business, a jewellery store or something like that, how is that going to affect those people who don't want the union?

If somebody has ongoing problems with one of the heads of a department and decides to strike, is that going to mean the other workers are forced to strike as well? Yes, it does, because if there's a strike, they're not going to come in and work. So the business that can't perform its day-to-day chores for the public, if it doesn't have a good source and a good banker, is in all likelihood going to close, even on short term.

**Mr Offer:** That, of course, speaks right to the need for an impact study, for the government to conduct a sector-by-sector analysis of what this legislation means to the small business community, the retail sector and the manufacturing sector.

**Ms Allen-Cooke:** That's correct.

**Mr Offer:** We've been calling for that for almost a year now, and I find it incredible that the government would not have conducted that type of study.

**Ms Allen-Cooke:** That's what we're asking for. We believe that will solve all the unknown factors.

**Mrs Witmer:** Thank you very much for your excellent presentation. I very much appreciate the personal experiences you have quoted in the text of your presentation. You ask the question on the final page, "Will Ontario be perceived as a bad place to invest?"

I would just comment that last night I had an opportunity to listen to a CEO who has companies not only in Ontario but also in Michigan. His topic was, "Is Ontario still a good place in which to do business?" I guess what he told us is that unfortunately the perception of Ontario is that it is not a good place to invest. The perception and the reality are somewhat different, but unfortunately, it's the perception. Can you give us any experience you've had with that perception? Have you heard from your community about lost investment opportunities?

**Ms Nicolson-Morrison:** Someone like Frank Stronach, although I'm not speaking for Mr Stronach, already has some factories stateside and in Mexico. With free trade, a mixture of both, are we going to look at manufacturers who suddenly think—and again, it could be lack of knowledge, but the unions are coming in. These amendments are coming in. I don't by any means, as Mr Wood said, think these are small changes. They're very large changes. The impact is incredible.

Are they going to suddenly get the perception that we're going to be a union-run province and therefore back out? They're going to say: "I don't need this. The investment would be better in Mexico. I can put the factory up, train the workers and not have to worry." That is definitely a perceived problem for us. A lot of it is education, but I don't by any means believe that these changes are small.



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**Mrs Witmer:** No, and unfortunately it's certainly the perception outside of the boundaries of Ontario that these are major changes. Certainly at a time when people are free to invest wherever they wish to and set up their operations, there's no incentive whatsoever.

I appreciate the comments that you made regarding the small business community and the financial implications, because although the government certainly is sincere in its attempt to look at labour law reform and make changes, I don't think the impact of those changes has been given the serious economic consideration that it deserves.

You mention here that higher wages, more demands and the denial of the use of replacement workers could effectively close some businesses. Then you give an example from the manager of the Royal Bank, who tells us that at the present time many businesses simply are under-financed and bankruptcy is only a day or two away. Could you expand on the particular financial implications of that on the small business community?

**Ms Allen-Cooke:** In our area we have a lot of shops. We have Upper Canada Mall and in-house are 290-odd stores. However, on Main Street the merchants have small businesses that are family owned, family run, and if a few people—and again, please don't get me wrong; I'm not saying there's anything wrong with a union. But in the event that even a couple, just to be disruptive, chose to form a small union, that could close a business when it counts on day-to-day business for its revenues.

In the last two years our recessive economy has really claimed a lot of businesses. Day in and day out, you just look at the numbers and it's staggering, not only in the city but in our own areas. You go down one street, business today and gone tomorrow. A prime example: a service station owner, which is again a small business, on Leslie Street has been there for years. I pulled in last night to get gas and his pumps are gone, but he was fine the day before. The number just rose by one again.

They've used all their resources, all the glory of the 1980s, all the money they made—unfortunately nobody saves that much—and there's nothing left. They're on a day-to-day basis and there just isn't enough to float even a two-week or a three-week strike.

**The Chair:** I want to say thank you to the Newmarket Chamber of Commerce, to Debbie Allen-Cooke, second vice-president and member of the policy committee, and to Heather Nicolson-Morrison, BA, BA, MA, manager, Newmarket Chamber of Commerce. We appreciate your interest and your presence here today. Thank you. Take care. Have a safe trip back up the Don Valley and the 400 and whatever.

#### BRANTFORD AND DISTRICT LABOUR COUNCIL

**The Chair:** The next participant is the Brantford and District Labour Council.

**Mr Ward:** And a fine organization it is.

**The Chair:** So I've been told many times, not necessarily by people from Brantford, either. Sir, please tell us your name and your title, if any. We've got your written

submissions that will form part of the record. Proceed with your comments.

**Mr Dave Digout:** My name is Dave Digout. I'm an executive member of the Brantford and District Labour Council and chair the political action committee. I'd like to thank you for giving me the symbolic honour of speaking on the last day before Labour Day. It's rather nice.

I'm here today on behalf of the Brantford and District Labour Council to speak on the urgent need for labour reform in this province. As a bit of background, the Brantford and District Labour Council represents about 6,000 workers represented by 36 different unions.

The workers of Brantford are painfully aware of the changes that have gone on in the economy of Ontario in the last 20 years. If union representation is any indication, we've lost 11,000 members of the labour council in the last 10 years. I can list a whole bunch of companies that have disappeared over the last 10 years, and it's really sad.

Since the last changes to the act, which was three governments ago, the economy has been transformed. The number of manufacturing jobs in this province, as a percentage of the jobs, has been reduced, and the number of jobs in the retail and service sectors has increased. Many of these manufacturing jobs were high paying and had very good benefits. Unfortunately, the retail and service sector jobs, which some refer to as "McJobs," don't pay very well. They often have very little or no benefits and the working conditions are less than ideal.

Although there has been some improvement in employment equity within the province, women, visible minorities and handicapped workers are still ghettoized into marginal jobs. Also, many people are forced to work at more than one job, and often both parents are required to work in order to provide for their families. Unfortunately, the free trade agreement and the proposed North American deal are also going to put some pressures on the workers of this province in the next few years, and I think there's going to be need for labour reform in order to help them.

Decent wages, good benefits and proper health and safety standards were achieved in years of struggle by the men and women in the labour movement here in this province. I think workers in Ontario deserve the right to organize to obtain their rights and dignities, and the laws must be changed to reflect the new realities here in Ontario.

One thing I would like to point out is that the purpose clause outlined in section 5 is a small but important step to recognizing this. The current act contains a preamble which merely outlines the reason for the act's existence. The proposed clause explains exactly what the reforms are intended to achieve: recognizing the rights of workers to freely join a trade union and to encourage the collective bargaining process in order to foster a better working environment. Nothing else can be more important.

Increased employee participation in the workplace and improved labour relations will help Ontario, I think, to achieve a vibrant and prosperous economy. It's really important. It is also very important that many workers in Ontario have access to the collective bargaining process. This is accomplished somewhat by the expansion of job categories eligible for worker representation. Domestics,

for example, will be able to obtain better wages and benefits in an industry in which—face it—they are not treated very well, not the best working conditions to be in. Unfortunately, a lot of immigrant women get stuck in a domestic job and it's not fun.

Security guards will finally be given a basic right, the right to join the union of their choice. Also, some agricultural workers will be given the right to organize. Unfortunately, many of them, faced with poor working conditions, exposure to hazardous chemicals and a routine little different from that of an assembly line still are not given this choice. I hope the government will redress this imbalance. I understand there's a task force being formed to study this situation. I hope they come up with some good recommendations.

An integral part of the organizing process is being able to get in contact with the workers involved. Obtaining an employee list would go a long way towards resolving this problem. This is not such a radical idea. Mailing lists get bought and sold more easily than hockey cards. I know I receive mailings from organizations and businesses and I have no idea how they got my name. I just wonder how my name got on all these databases. I don't think there's going to be a problem with an invasion of privacy. Unions keep their files very confidential. I'm a union executive, and I've never seen an employee list and I really don't want to see it. I think if the government is going to amend the act even more, it should give unions legal access to these files.

More important to an organizing drive is the ability to talk with workers face to face. For example, the retail sector, which has only 11% of its workers belonging to collective bargaining units, is located in previously inaccessible shopping centres. Yet, as the Eaton's organizing drive of a few years ago indicated, there is a need for union representation in the retail sector.

The amendments outlined in section 11.1 will redress this problem. It allows access to areas normally open to the public. If there is a conflict, the Ontario Labour Relations Board will now be able to quickly adjudicate this impasse. If the union can go talk to the workers and shopping malls are basically becoming the main street of a city now, I think it's reasonable to expect that it can go in there and talk to them without being charged for trespassing or something like that.

Once the organizing drive is in progress, there are a number of ways the Ontario Labour Relations Act can be amended in order to streamline the process and make it as undistruptive as possible.

A good case in point is where I work, Westcan Chromalox. We were organized by the United Electrical Workers in 1989. The allegedly employee-initiated petitions were treated as an unnecessary hindrance and considered ultimately futile. The one person who did try to start a petition left work and wasn't there any more. The dollar payment to indicate a person's acceptance of the union was a bother and an inconvenience. Just signing the card should have been considered sufficient.

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Eventually, over 90% of the employees accepted the first contract. I feel and many of my fellow employees feel also that the atmosphere at the plant improved. Both the workers and the management now knew exactly what their rights and duties were according to the contract. It hasn't prevented the company from making good or bad business decisions; it did not prevent Glen Dimplex, an Irish firm, from purchasing the business in 1991. Having a union there has not prevented the company from putting, to be honest, a large amount of money in upgrading facilities so that when everything is going by the end of the year, we're going to be a very efficient and hopefully profitable business. The company can't treat its workers arbitrarily any more, and some open and cooperative communication has resulted.

I think what this episode illustrates is some of the shortcomings of the current act. The Ontario government is taking some steps which should alleviate some of the problems. The money payment is not necessary and can be eliminated. Petitions after an application for certification have always been disruptive and time-consuming, rarely succeed and will be eliminated. I'm glad to see that.

It does not restrict the rights of workers. If they do not want a union, they can talk, they can argue, and when it comes down to it, they can vote against the union. If a majority of the employees don't want it, it's not there. The CAW or the Steelworkers cannot come marching in and say, "You're one of ours now." After all, democracy is what unions are all about.

Signing up 40% of the workers is adequate. Even governments have been elected with less support. However, I fail to understand why the government has refused to reduce the 55% level required for certification. A simple majority, which is common with a number of other groups—to accept a contract, for example, just requires a simple majority—should have been sufficient.

Although it is preferable that contract negotiations be handled directly between the two parties, there are some occasions where the government can intervene to speed up the process, especially in the first-contract phase.

One of the best proposals is section 9.2, giving the Ontario Labour Relations Board the right to certify a bargaining unit if it has found that the true wishes of the employees cannot be determined due to the actions of the employer. No longer will the employer be able to use some of the cheap pressure tactics in order to prevent the workers from uniting. Again, that comes from experience when we were organizing in 1989.

Another good step is removing the discrimination between full- and part-time workers if the union decides they should be combined. Part-time workers have always got the short end of the stick. By joining them with their full-time brothers and sisters, their lot will surely improve.

Combining bargaining units will improve industrial relations. I know in Brantford, the daily newspaper, the Expositor, has five bargaining units represented by three unions. Combining the three which belong to the Southern Ontario News Guild, or even combining all five, is going



to speed up the process, and it will save time and money. They don't have to duplicate efforts because they'll have one bargaining unit to deal with. They won't have to deal with five of them.

Speeding up the arbitration procedures will also save time and money. Taking up to 100 days to process a complaint is too long; it leaves too many people hanging on tenterhooks. If they can process them in 30 days, great, it will solve the problem and we can get back to work.

Unfortunately, a small minority of situations, less than 5% of all contract negotiations, deteriorate to the point where the workers feel they have to walk out in order to get a fair settlement. An even smaller minority of employers think they can do an end run around their workers by bringing in replacements. The labour term is "scabs," and I think it's a very appropriate term.

I remember back in 1971 there was a company called Texpak which had a very bitter strike. The company attempted to bring in replacement workers, and almost every day the call would go out, "The cops are coming down to Texpak." We'd all hop on our bikes and we'd ride down there to watch the fun. I can still remember one woman having her leg broken in the ensuing troubles. It is an extremely vivid memory, and it's something that should not happen.

It shouldn't be allowed to happen. It never helps anyone and it gives the company a chance to poison already strained relations with its employees. It forces our brothers and sisters in law enforcement to act against their neighbours and friends when tempers get short. It places the replacement workers in emotional conflict, forcing them to decide whether or not they should steal the livelihood of others. Above all, it places an undue amount of pressure on the workers who are on strike in order to get decent wages, good benefits, proper health and safety standards. Too many workers have already been arrested, injured or even killed because of this loophole, and I think it's about time it was closed.

Strikes may represent only a small part of labour relations, but the government must take action to lessen the tensions. Banning replacement workers is a step in the right direction.

We've heard a lot of talk today about the legislation in Quebec and whether or not it has been effective. If you've seen the statistics—I'm sure you've seen thousands of stats over it—it hasn't significantly decreased the number of workdays lost, but it's an important psychological step because I think it would alleviate the violence on a picket line, because the company cannot bring people in there.

If you see somebody going to take your job, you're going to get upset. We're very lucky that it represents only a small part of industrial relations here in Ontario, and I hope that by not bringing them in it will make it an even smaller minority. It would only be if people get really upset, and I would hope that doesn't happen.

Unfortunately, the government proposals are still inadequate. It allows only a 60% vote on a strike rather than a simple majority before the anti-replacement worker provisions kick in. I know I'm deviating from the text a little bit.

There's also still a lot of work to be done by non-union employees moved to another company location or contracted out. If the workers who are trying to achieve a better life have to go through the financial pain that they're going through in a strike situation, it's only fair that the company has to go through the same pain.

Members of the labour movement in Brantford are saddened rather than angered by the attempts of several apparently responsible organizations and individuals to create a wave of hysteria over the proposed labour reforms. In July, the Brantford Chamber of Commerce instituted a one-week campaign that had a rather lousy radio campaign talking about how jobs are going to be lost, how it's going to destroy the family farm. It got some people upset. Of course the general consensus was that the whole campaign was a wash-out, that they didn't do a very good job.

I also find it inconceivable that so many in the business community still consider unions a threat. If democracy, fairness and dignity are threats, then every man and woman in the labour movement can be considered subversive. Having a union at work can be beneficial.

Women in the workplace now have access to higher-paying jobs because of anti-discrimination clauses in the contract. I know at work we've hired some people to work in some of the higher-paying positions, and the majority of them are women. That's never happened before in that company. As part of the new contract, an anti-discrimination clause was put in. It says that the company cannot discriminate on the basis of sex, racial origin and the like. I think that's one of the effects of that clause.

The labour movement has been in the forefront of the fight for social justice and improving the quality of life here in Ontario. Health and safety standards, public education and a whole number of other issues: The labour movement has always fought for it, and for some reason on a number of issues the corporate sector's fought against it.

I know that in Brantford the labour movement has also been very effective in the social field. We've raised nearly \$100,000 for the United Way campaign over the last two years. No other corporation in Brantford has come close. We're hoping that this weekend we can raise even more.

I'll tell you, though, Ontario workers are the best in the world. It seems from some of the discussions here that some people are trying to put down Ontario workers. I'm sure that's not their intent. I'm sure they don't believe that. It's just some of the things they are saying. I can't tell you exactly where I've seen the figures, but I've heard that Ontario workers spend more time at work each week and have less time off on paid vacations than their European counterparts.

There was an article in the *Globe and Mail* Report on Business magazine a couple of months ago where they were talking about the problems companies were having in the United States and Mexico. They were talking about three-hour siestas that the Mexican workers were taking. When fishing season opened in Georgia, half the workforce was disappearing. That doesn't happen here in Ontario.

Some people argue about the trade unions that are the voice of the workers here in Ontario that their time has

passed. But as long as businesses, under the guise of competitiveness, refuse to pay a decent wage, provide a healthy and safe workplace, and treat their workers with a little bit of dignity and fairness, there's always going to be a need for workers to unite and fight for their rights.

Open and cooperative labour relations will create a better atmosphere at work. If they feel they're being treated fairly, they'll work harder, and who knows what kind of economic growth will occur.

I think the Ontario government has taken a big step in recognizing this goal and I think it should go ahead with the proposed labour law reforms. Thank you.

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**Mr McGuinty:** Thank you very much for your presentation. I enjoyed it. Your sincerity shines through. There's one thing I want to touch on which you raised. In here you make a complaint about the 55% level required for certification.

**Mr Digout:** Right.

**Mr McGuinty:** You know, it's a damned good question. Why is it that in democracies generally, we look to a simple majority?

**Mr Digout:** Right.

**Mr McGuinty:** Why would not an NDP government reduce it to a simple 51%? Good question. The answer is simple: It's because there's a recognition in 55%, an allowance or a safety valve. What's happening here is we're having cards signed, not in a democratic—we're not talking about secret ballots where people sign something in the absence of others and they can decide one way or the other. You're signing a card generally—often—in the presence of another. That is not in keeping with the normal, democratic process of the secret ballot.

I'm going to put a proposal to you and I want to get your reaction to this. Let's bring it down to a simple majority, but use this process: When there's an organizing drive under way, the organizing body, the union, puts the employer on notice. A notice has to be posted advising the workers of their rights, specifically advising that the employer's not allowed to intimidate them, harass them, threaten dismissal, those kinds of things. All they've got to do is sign up just 20%, then they take it to the board. The board confirms they got the 20% and then you have a secret ballot and you get in with your 51%.

**Mr Digout:** That's interesting. I can tell from personal experience that there was never any intimidation or coercion when I signed my card. A person came up and said, "Dave, we're getting a union." I said, "All right, I'm in." I signed my card and paid my loonie; we had dollar bills back then.

I think what happened with the 55% is that basically the government threw a bone to opponents of the bill. They said, "Okay, we'd like to have 50%." I've seen a couple of policy papers and discussion papers on the majority level and it was 50%. When the final proposal came out it said 55%, so I think it was just a concession. I'd like to see 50%. It's not a major issue but it would have been nice to have seen a simple majority.

The secret ballot is held when the contract is voted on. That's the point of the secret ballot, and especially on the

first contract. That vote on the first contract is basically a vote of confidence in the union, so when that contract gets passed, in our case over 90%, I think that indicates support for the new union.

**Mr Phillips:** I didn't get your last name, Dave; I'm sorry.

**Mr Digout:** Digout.

**Mr Phillips:** Thank you. Just so you know where I come from, "The corporate sector has fought so hard against improving the quality of life of the people of Ontario"; I don't buy that. I find it unfortunate, sad even, that the labour movement actually believes that. I think it's a symbol to me of the challenge we've got in the economy ahead. I realize you believe that and I realize the labour movement believes that.

**Mr Digout:** Right.

**Mr Phillips:** I don't. Some members of the corporate sector, maybe, but I don't see life perhaps as you do as "them and us" and, "They're all bad."

**Mr Digout:** Neither do I.

**Mr Phillips:** I'm just making that observation because I want to get to my question. I've made that observation to many in the labour movement. I make the same observation to the business community. If we think that way, we have almost an insurmountable problem in the province, because some of the very best social conscience of this province, believe it or not, belonged to some of the presidents of organizations who worked like crazy to make this a better place and spent thousands of hours of their own time. I just want to make that point because we all have to get rid of this—

**The Chair:** You'd better ask your question, Mr Phillips.

**Mr Phillips:** My question, then, is this: We've heard from some people that when you need a union is where you have a bad employer and you need to redress the inequities of a bad employer. I'm wondering if that's where you see the need for a union.

**The Chair:** Go ahead. Respond to that, please.

**Mr Digout:** Yes, if—

**Mr Phillips:** But not—

**The Chair:** Go ahead, sir.

**Mr Phillips:** But if it's a good employer, you don't see the need for one, is that—

**The Chair:** Would you please respond.

**Mr Digout:** Okay. For one thing, I agree with you on your first point. Often we end up talking past each other rather than at each other. It's unfortunate that some people on both sides use rather heated rhetoric. Okay, I admit I used a bit of heated rhetoric there. Unfortunately, there are all too many people in the corporate sector who oppose things like employment equity and pay equity, and these are important issues.

About your question, though, if a majority of people at a workplace, whether they're being treated well or whether they're being treated badly, want a union, they should be given the right to. Unfortunately, there are a lot of places where workers are subject to harassment, where the health



conditions are not the best. If they can join together and say to the company: "Listen, you've got to improve the way you're doing things. We don't like the way you're doing things. We want to work here but you've got to listen to us. You've got to help us improve things. We want to help you. We want to work here. We want this company to make money. We want to make money"—I certainly want the company to make money because I'd like to have my job.

Another example: Right now we're trying to persuade the company to change the process a little bit in how it handles some of the manufacturing and we're not getting anywhere. The company won't listen to us. If we weren't unionized, the people who have been bringing this up would in all likelihood be out the door because of insubordination, but we're dealing with it in the union-management relationship, and we're slowly but surely getting the company to realize that some of the ways it is doing things can be improved. If employees across this province can get together with their company in a structured format, which often happens in a union situation, they can really improve the workplace.

**Mrs Witmer:** Thank you very much, Dave, for your presentation. I guess unfortunately, when we listen to your presentation and some of the ones that have gone today and previous days, it becomes abundantly clear that there's a tremendous amount of polarization on this issue.

This issue is not about putting workers down in this province. I think we have one of the most effective workforces in the entire world. In fact the speaker I heard last night told me exactly that. He said whether that you have a unionized or a non-unionized workplace, the workers he has in both of those arenas produce for him in the same way. He said what is key today, if you're going to survive, is that workers and management work effectively together. So that's not the issue, and the issue is not about whether or not it's good to have a union. Obviously, the issue is that people need to be free to be able to choose a union and need to be provided with all the information.

I'd like to talk to you about the process. I believe that when Bob Rae came into power two years ago, he had a wonderful opportunity to bring management and workers together. In fact, he had a historic opportunity no other Premier has ever had. Unfortunately, the process he used to introduce Bill 40 was such that there was not a tripartite discussion process. He didn't bring people together and say, "We have a problem; how can we solve it?" and then allow the parties, through consensus, to arrive at solutions.

Why was that opportunity missed? Now is the time we need to set aside the differences between workers and management, because I'll tell you, this legislation isn't going to create one new job.

**Mr Wood:** It's not intended to. It's intended to make things fair.

**Mr Digout:** That's right. I have to disagree with you on the consultation process. I first saw the party policy in March 1990. I've seen the original Ministry of Labour working paper from November 1991. There were discussions in the winter and spring of 1992. This committee has

been going on for five weeks now. I think the government has received plenty of input from numerous groups on the pros and cons of Bill 40. They've been consulting with people till it must be coming out of their hair. To be honest, I think the process has gone on too long. The government was installed in October 1990. I know people who have been working on this bill since then. It should have been in last year at the minimum.

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**Mrs Witmer:** Unfortunately, what's happened is the government might have gone through a supposed consultation process; however, we're still dealing with the same union-driven agenda and we don't see any input from anyone else. Whether it be the municipalities, the children's aid societies, the school boards or individual workers, we're still dealing with the same agenda. So it's one thing to listen, but I think if you have a true consultation process you need to incorporate the views of all of the participants. That's why people feel frustrated, because that has not happened.

**Mr Digout:** If this were a union-driven agenda, this bill would not look the same. I've seen labour proposals that have disappeared from this bill because the government has listened to the business community and said: "Okay, this was our original proposal. Yes, we can see why it wouldn't work or why there would be some problems, so we'll modify it a little bit." Believe me, if the Ontario Federation of Labour had written this bill, it would not be the same. The government has done a very good job on consulting and amending its proposals.

**Mr Brad Ward (Brantford):** Dave, I'd like to thank you for coming and giving a fine presentation on behalf of the Brantford and District Labour Council. You made a statement that if this bill had been drafted strictly by trade union representatives, it would look far different than how it looks today. You're suggesting that we as a government have tried to strike that balance between business concerns and employee wishes or trade union requests. Is that a fair statement, that from your point of view the bill has been watered down to deal with some of business's concerns?

**Mr Digout:** No, not watered down. What they've done is they've listened to other constituencies and incorporated some of their ideas and beliefs into the legislation. Some people would say watered down, but I'd say changed; they have done a fairly good job of consulting with people.

**Mr Ward:** Your workplace has been unionized for how long?

**Mr Digout:** Just about three years.

**Mr Ward:** There has been an inference by critics of Bill 40 that when employees become certified to have a trade union represent them there is a sense of irresponsibility on the part of the employees when it comes to bargaining a collective agreement with their employer. For the benefit of this committee and the people of Ontario, can you run through the process that your workplace uses when you begin to negotiate a new collective agreement with your employer?

**Mr Digout:** We just negotiated a contract in March. In January we had a union meeting where the executive said, "Okay, what kind of ideas have you got which can be included in the new contract?" There were ideas going left and right. They must have received three dozen suggestions on how to improve the contract. Then the negotiating committee was formed and it negotiated with the company. Admittedly, they had to keep some of the negotiations confidential because, as they said, the problem is that you get rumours going around and it throws the whole process out of whack.

The agreement was reached in March 1992. We had a special meeting of the employees where we were given the changes to the contract. We discussed it for two or two and a half hours. We received 6% over two years. It's not the best, but it's actually running a bit ahead of contract settlements in the industry. We were kept well informed by our negotiating committee. They were willing to listen to us. I was certainly satisfied with the way the process went.

**Mr Ward:** The labour movement has a rich history in Brantford, from the formation of the International Moulders Union in the late 1800s right up to the 1990s. I recall that it was the initiative of Bill Humble, the president of the labour council in the early 1960s, that started the fund-raising drive to build our very fine civic centre, which was opened in 1967, centennial year. I don't think that civic centre would be there if it wasn't for the initiative of organized labour. You, representing the public utilities commission in ward 1—

**Mr Digout:** A politician like yourself.

**Mr Ward:** Trade unionists are involved in community committees, and I understand—I think my time's almost stopped, Mr Chair—that there's a big weekend planned by the labour council for Labour Day. As part of the United Way fund-raising, perhaps you'd like to tell us about this weekend for the people of Ontario. They may want to come and visit our community.

**The Chair:** Let him tell us, Mr Ward.

**Mr Digout:** Gee, Brad, thanks for the plug. Well, this weekend is the kickoff of the United Way 1992 campaign. They're combining with the labour council for the Labour Day weekend because the labour council has also been so closely involved with it.

On Saturday we're having our fifth annual tug-of-war contest, face painters, clowns, a couple of players from the Brantford Smoke, from the Cornell hockey league, politicians' dunk tanks—I hope you're going to go into that, Brad—

**Mr Hope:** Kormos is.

**Mr Digout:** —and Saturday night we're having a comedy cabaret. We're holding it at Icomm, which is the new centre for telecommunications. It's a telecommunications discovery centre that's being built there.

There's the water theme park in Brantford, which the labour council has booked free for the children of Brantford for the entire day Sunday.

**Mr Wood:** Free?

**Mr Digout:** Free. Hopefully, the weather will be nice so we'll have thousands of kids there and the labour council will be run ragged trying to take care of them.

**The Chair:** Thank you, Mr Digout. Perhaps it would be more appropriate to have politicians in the comedy cabaret than the dunk tank. But in any event, I want to thank you, sir, and the Brantford and District Labour Council for your participation in this process. You've played an important role and you've spoken effectively on behalf of your membership.

I, of course, will be in Brantford on Saturday, September 5, starting at 9 o'clock at the Waterfront Park for the annual Labour Day picnic fund-raiser for the United Way, as I was last year. I look forward to that and meeting you and other Brantfordites then. Thank you kindly, sir.

**Mr Digout:** Thank you. I apologize for talking too fast.

**The Chair:** Take care. Have a safe trip back.

**Mr Offer:** Yesterday, Mr Chair, there was a deferral of a vote on my motion to this point in time. I call for the vote.

**The Chair:** There was a motion moved yesterday by Mr Offer.

**Mrs Witmer:** Mr Kormos, I would like to move an amendment to that motion. My amendment would be that during those two weeks of extended hearings I would want at least some of that time spent on hearings in the riding of Waterloo North.

**The Chair:** A rather parochial amendment, but valid none the less. I guess the question at this point is to Mr Offer as to whether or not he wants to incorporate that amendment. Go ahead.

**Mr Offer:** Mr Chair, I have no problem, but I would also like to indicate that my motion was not specific to a particular place. That could be discussed and decided upon by the subcommittee. The preamble to my motion spoke about the number of presentations we heard in committee as opposed to those that were requested, but it was not limited to those particular cities. We've been to a number of cities and there are a number of cities which we still have not been to.

**The Chair:** Ms Witmer, do you want to speak to the Waterloo North amendment?

**Mrs Witmer:** I think it's extremely important that the hearings be held in my community. Certainly, I would encourage the subcommittee, if it's not put forward here, to give very serious consideration to having the hearings in Waterloo North for some of the time. I'd really like an opportunity to vote on that particular issue.

**The Chair:** Would that be during Oktoberfest?

**Mrs Witmer:** I'll tell you, last night the invitation was extended to everybody to come and participate.

**The Chair:** Any other discussion regarding Ms Witmer's Waterloo North amendment? All those in favour of Ms Witmer's Waterloo North amendment, please raise their hands. All those opposed? The amendment is defeated.



We now move to Mr Offer's motion, a copy of which was distributed yesterday.

**Mr Offer:** A recorded vote.

The committee divided on Mr Offer's motion, which was negatived on the following vote:

**Ayes—5**

McGuinty, Offer, Phillips, Turnbull, Witmer.

**Nays—6**

Hayes, Hope, Huget, Murdock (Sudbury), Ward (Brantford), Wood.

**The Chair:** Mr Offer, you posed some questions to Ministry of Labour staff. I understand that a staff person is here, prepared to respond to those. Please go ahead.

**Ms Beverly Burns:** Good morning. Beverly Burns. I believe the question was about the appointment of Mr Victor Pathe as deputy minister. He has been appointed deputy minister of labour management services, which is the old industrial relations division of the Ministry of Labour. It's comprised of the office of mediation, the office of arbitration and the office of collective bargaining information.

The ministry has created labour management services to be an arm's-length entity from the ministry to preserve the service's independence and neutrality when dealing with parties who are bargaining, so that mediators who are sent in can maintain a more neutral stance. It's not reflective of the work organization service that's in the bill.

**The Chair:** Mr Offer, is that satisfactory?

**Mr Offer:** I thank you for that clarification.

**The Chair:** Thank you, Ms Burns. Thank you kindly. We're recessed till—

**Mr Ward:** I have a request of legislative research.

**The Chair:** Go ahead.

**Mr Ward:** We had a presentation from the Association of Professional Engineers of Ontario, and from that presentation we gathered that membership was compulsory to the association if you wanted to be a professional engineer in Ontario. I would like legislative research to review other professional organizations to see, if that is common, where compulsory fees are paid.

**The Chair:** You're restricting that to the province of Ontario?

**Mr Ward:** Province of Ontario.

**The Chair:** That's noted. Yes, sir?

**Mr Phillips:** If I might, on a point of information, we heard this morning about some feeling by one of the groups that there may be a study in MITT. I wonder if we mightn't send a letter to the minister asking if there's been any analysis done on the impact on the Ontario economy or on jobs or on Ontario industry as a result of any amendments planned for the Labour Relations Act.

**The Chair:** You're suggesting that the committee write to the minister making that inquiry. There's agreement in that regard.

**The Chair:** Recessed till 1:30.

The committee recessed at 1212.

## AFTERNOON SITTING

The committee resumed at 1330.

**The Chair:** It's 1:30 and we're going to resume these hearings. The first participant this afternoon is the Retail Council of Canada.

I would ask people to note that there is simultaneous French-language translation taking place, obviously available to people who are watching this on the French-language cable station. At the same time, as on other occasions when there's French-language translation, receiving devices and earphones are available to people who are spectators or who are participants on the panel. One of the concerns many people have had is that although these are available, it isn't advertised anywhere in the area of the committee room, and it isn't advertised at the point of access to the committee room—the simple fact that French-language translation is available and that devices are available—by way of, for instance, a sign. That would certainly be a valuable thing.

I've also been made aware, and my own use of the receiver indicates, of some bad reception, some very defective reception. That could well be due to the fact that people other than the technicians who are familiar with the equipment are required to handle them, to store them and to place them aside. I would think that permanent storage of at least some of these receiving units within the Amethyst Room, so that they would always be available, would be an appropriate thing; similarly, the requirement that all these units be maintained by the equipment technicians so that they would be cared for properly and so that defects could be detected. Again, that point has been made to me and I endorse it wholeheartedly.

It would be more than proper for whoever is responsible for these things, and I suppose knowing that occasionally whips and House leaders read these transcripts, to take care of that at the earliest opportunity.

## RETAIL COUNCIL OF CANADA

**The Chair:** Having said that, welcome, gentlemen. Please tell us your names and your titles, if any. We've got 30 minutes. Please try to save the last 15 minutes for exchanges. Go ahead.

**Mr Alisdair McKichan:** My name is Alisdair McKichan. I am president of Retail Council of Canada. I'm accompanied by Peter Woolford, who is vice-president of Retail Council of Canada.

We are pleased, Mr Chairman and members of the committee, to have this opportunity to represent the views and advice of the retail trade to the committee. As members of the committee will know, the retail trade is a major part of the Ontario economy, providing, in fact, about one eighth of the jobs in the province. Retail council's direct members are representative of virtually every sector of the trade and account for something over 60% in volume of Canada's and indeed Ontario's retail store sales volume. Our sister association, the Canadian Council of Grocery Distributors, also supports the views presented in this submission.

Our concerns in relation to this legislation relate not only to its impact on retailing or on trade, but indeed to the Ontario economy as a whole. In my remarks, I'd like both to make some general observations about the bill and to note some of the concerns we have with specific provisions of the legislation. I shall attempt, in a few minutes, to encapsulate the major points we make in our written submission.

First, on the issue of consultation, our council has a tradition, and indeed a history, of working responsibly with governments and other interested parties on public policy issues. We regret deeply that the government has refused repeated requests from us and other representatives of the business community for meaningful consultation among the interested parties. We are afraid the business community has been virtually disfranchised on this issue. The resulting acrimonious public debate has, we believe, only served to separate the parties further.

I would like to say a word on the impact on the economy. The health of the retail trade, it's not any surprise, depends heavily on the performance of the economy as a whole. As it prospers, so retailing prospers. This harmful bill could not come at a worse time for this trade. Thousands of retail stores have gone bankrupt or gone out of business in the current downturn and the slow recovery. At least 73,000 retailing jobs have been lost in the months since 1990.

We are deeply worried by the warnings from other sectors that the bill will cause a permanent loss of jobs and investment in other sectors. As you know, several influential Japanese and European sources have identified the government of Ontario, whether right or wrong, as a pro-union, anti-business administration. We understand that senior government officials, who met with executives from a number of major US firms to explain the proposals, heard a uniformly and entirely negative reaction from that source.

In the face of so much evidence about the economic costs of the bill, the government's refusal to perform meaningful economic analysis of the proposed changes is, we believe, unacceptable. An impartial study of the economic impact of the changes must, in our view, be undertaken. The government's refusal to do a study is also in direct conflict with the unanimous recommendation of the legislative committee on cross-border shopping, a committee of this body, that the government not undertake any measures that would worsen the competitive position of the province's retail trade. We believe this legislation certainly would worsen that position and exacerbate a problem which is a huge one and is causing great distress within our industry.

Despite our deep misgivings about the impact of the legislation, we have identified the changes that we view as most damaging to the trade, and we've suggested alternative solutions.

First of all, in the purpose clause, we believe the Ontario Labour Relations Act should have two objectives



only: first, to establish a fair opportunity for employees who want to join a union to decide democratically to do so, and second, to establish fair, efficient and effective relations between unionized employees and their management.

In our view, the proposed purpose clause would institute a systemic bias in favour of unions and against management. To correct this, we have offered some suggestions for drafting changes in our submission. The first purpose should be amended to read as follows:

"1. To ensure that workers have freedom of choice to join and be represented by a trade union and to participate in the lawful activities of the union."

Second, the change we suggest is:

"2. To improve the process of collective bargaining so as to enhance,

"i. the ability of employers and employees to negotiate the terms and conditions of employment."

I'm turning now to organizing issues. The proposals to assist unions in their organizing efforts would have the effect of trading off the rights and interests of the individual employee for the interests of the union and its management. The changes strip away the opportunity for employees to inform themselves, to reflect on the important decision they are to make and to discuss it among themselves. Given the current practice of union organizers operating in secret, some employees might not even become aware of the organizing drive until the application has actually been made. This is especially likely in retail operations where, because of shift scheduling, only a small portion of a relatively large staff is likely to be present at any one time. Those who do not hear about the campaign would be effectively disfranchised.

The changes with respect to organizing would also have the effect of preventing the employer from having any involvement in the certification process. Employers have a right, under section 64 of the act, to express their views, and this right must not be removed surreptitiously through process changes.

The best interests of both employees and employers are served by an open, fair discussion and a decision-making process. The best way to do this is through a secret ballot, preceded by the opportunity for employees to inform themselves on the issue.

The process, as we see it, should include a number of elements: A relatively small number of signed union cards would be all that was required to start the process, and we don't see, in this context, the necessity for a membership fee. The union would openly notify all employees of the intent to organize. Information from both the union and the employer would be distributed to all employees, under OLRB guidelines, by the employer. The union would continue to be free to contact employees off the employer's premises. After a set period of time, supervised secret ballots would be held. We believe that process would be open, democratic and fair.

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Let me turn to replacement workers. The ban on replacement workers is an especially powerful tool to enable unions to dominate retail firms in particular. The manage-

ment cadre in any location of a retail operation is small, so it would be likely impossible to maintain operations. For a business like retailing, closure of a store for even a short time can mean permanent loss of customers and often, as a result, the closure of the store or even the bankruptcy of the business. We question: Is that the true intention of the legislation?

The retail council's strong advice is to continue to permit the use of replacement workers. If the government is determined to strengthen union power, it must allow an employer to have some limited defence. Employers with operations at more than one location should be able to bring employees in from other locations and the right of non-striking employees to refuse to do work should be removed. Government, employer and union representatives, we believe, should work together to develop some possible alternatives for single-site employees which present particular problems and also particular hazards.

On the consolidation of bargaining units, the proposal to permit consolidation of bargaining units would improve union power and efficiency, but only at the cost of limiting the ability of employees at one location to make their own decisions. This concern is particularly important in retailing where within a region there can be a number of commonly owned but separate facilities, each with a distinct functional characteristic and a distinct style of operation.

The employer also loses because consolidation enables the union to control all the locations that might serve as selling units or act as a backup within the company. In the distribution business, where the flow of goods is essential to the survival of the firm, this would leave the firm helpless in the face of union pressure. We recommend that these changes be withdrawn.

On the access to an arbitrator, just as it's the union's responsibility to bargain on behalf of its members, so it's the responsibility of management to bargain on behalf of the firm. Automatic access to an arbitrator seriously interferes with the ability of management to meet its responsibilities and gives the union an extraordinary incentive not to settle within the 30-day period, as it virtually guarantees increased wages and benefits. In a very competitive industry like retailing, the consequence is almost certainly reduced employment, reduced hours and quite possibly the closure of stores.

The current legislation ensures that if there is wrongdoing on the part of either party in the negotiation, an arbitrator can be called in. This system has an indisputable virtue, in our view: It works.

If the government really believes there is insufficient recourse to arbitration in first-contract situations, it would be appropriate to reconsider the grounds under which the rules are triggered.

Let me deal with picketing on third-party premises. Merchants spend extensive effort and money to create an atmosphere in their stores that attracts customers and makes them feel comfortable. The amendments to permit picketing in the common areas of shopping malls give unions the power and right to disrupt this atmosphere. More seriously, picketing could affect the business of neighbouring stores or even the whole mall. These businesses are likely

to bring pressure to force an employer to settle with the union at virtually any cost and without regard to the rights or wrongs of the situation.

Retailers are also concerned about the impact on public safety of introducing a controversial action into the closed area of a shopping mall. We've seen some evidence in this city recently of what can happen when there is a disturbance in such a confined and hazardous area. Public opinion research shows that the majority of the public is opposed to picketing in malls.

On security guards, theft of merchandise or money by employees is a \$2-million-a-day problem for retailing. Retailers cannot afford to have the effectiveness of their internal loss prevention staff compromised by a conflict of interest between loyalty to the firm on the one hand and fellow feeling for union brothers and sisters on the other.

If the government is determined to increase market opportunities for unions in the security area, we believe it should stipulate that these employees could not join a union which represents other employees in that same firm.

To conclude, the comments and recommendations offered in this submission are intended to assist in improving what we believe to be a seriously flawed, indeed a dangerous piece of legislation, which currently is focused solely on improving the power and position of labour unions. Our first preference continues to be the development of a balanced, fair set of proposals through constructive consultation among representatives of management, labour and the government.

We do not believe that current legislation is seriously flawed, but if there are better ways to achieve fairness and preserve an individual's freedom to make informed decisions, our members have been and will be open-minded. It's only because of the failure of the discussion process up to now that we have developed, from the point of view of retail employers, changes that we believe are needed to achieve a minimum of fairness and practicality.

There should be no doubt at all that these changes are essential if the bill is to be moved forward. If they are not implemented, then our advice to members is to defeat the bill.

**The Chair:** Thank you, sir. Four and a half minutes per caucus. Ms Witmer, please.

**Mrs Witmer:** Thank you very much for your presentation. We really do appreciate the unique perspective you bring from the retailing business. You talk about replacement workers in here and you argue for the continued use of the replacement worker. Could you tell us why you feel this is absolutely essential?

**Mr McKichan:** Basically because experience shows that retail stores are not capable of taking a closedown situation for any length of time without a serious loss of business and, in many cases, the actual closure of the store. Customers are fickle; they change their habits very readily. If they can't get served in one store, they'll go to another. They lose the habit of going to that store and the loss of business is tremendous and lasting.

**Mrs Witmer:** So customer loyalty doesn't last very long if a store is closed.

**Mr McKichan:** That's right.

**Mr David Turnbull (York Mills):** My question is with respect to first-contract arbitration. It seems to me that the unions would have no desire to come to any agreement in that 30 days. They would sooner go to first-contract arbitration. I'm most concerned that this legislation does not include a directive to the arbitrators that they must take into account the economic situation of the company in arriving at any settlement. Could you comment on that?

**Mr McKichan:** That's also of extreme concern to us, because obviously the union has nothing to lose but everything to gain by deliberately aiming for an arbitrated settlement. If the arbitrator is simply asked to weigh the rights between the parties, the tendency will be to split whatever difference there is, although that division may be sufficient to drive the store out of business.

That's by no means a fanciful prediction in these days when a high percentage of all the stores in Ontario not only are facing competition from their colleagues in the business in Canada but are facing extreme competition from the US outlets, where we know the operating costs are considerably lower than in Canada.

**Mr Turnbull:** And the taxes are considerably lower, yes.

**Mr McKichan:** I'm considering that as part of the operating costs.

**Mr Turnbull:** Turning to third-party property picketing, and I'm particularly thinking of shopping plazas when I think of this, it would seem to me that—and we have to accept that the government believes this when it suggests it is in some way going to cut down on picket line violence by not having replacement workers—given the fact that you've already stated essentially that most of your operations would be closed down if there were no replacement workers, I would say the question is, why would picketing still be allowed if essentially these operations are going to be closed down? Why would you allow it on third-party property?

**Mr McKichan:** If the operation can't operate, pickets become kind of meaningless, in my view.

**Mr Turnbull:** Exactly.

**Mr McKichan:** We do point out the other hazards of pickets within third-party property, because shopping malls tend to be in closed, confined places. If there are any suggestions of violence, it occurs in the worst possible surroundings: surrounded by plate glass, surrounded by narrow entrances, places where crowds can get trapped. As we have seen and as I said, in the last few months there have been incidents in Toronto which have been extremely hazardous and extremely upsetting for the people involved.

**The Chair:** Mr Hayes. Please leave some time for Ms Murdock.

1350

**Mr Pat Hayes (Essex-Kent):** Thank you for your presentation. There's been a lot of discussion regarding intimidation, coercion, threatening or what have you for workers who wanted or indicated that they wanted to join



unions. In some areas we've had some specific cases of this, but one presentation was made to us last week in Ottawa with the retail workers and the department store union which—actually it refers to the Bay, and of course you're representing the Bay. Its document here says the "Bay Ontario Union Avoidance Action Plan."

There are some things in here like union-avoidance tactics: identify potential inside organizers and isolate them; keep them on the same shift, for example. Some other areas here: deny posting space; list the names, numbers, addresses and related information; remind employees of good things that the company is now doing for them, and it's got in brackets, "but no threats"; give some examples, like wages compared to union wages, then in brackets it says, "if favourable."

Even though some people may say this may not be intimidating—the issue of isolating workers and keeping them from talking to the people in the cafeteria or phoning them up and discussing about signing union cards—some people would say that really would be intimidation or interference. I guess my question to you would be, are there other places you represent that—I'm hoping this kind of a document is not a trend.

**Mr McKichan:** I think the responsible employers are anxious to avoid intimidation both by employers and by union members. As we see it, the best way of ensuring that this doesn't occur is to allow employees to make their decisions in private, in secret where no one knows what their decision will be, where they can fully express their opinions. We think very, very earnestly that we should strive for that situation in this legislation because that would eliminate all the questions of intimidation and I can't think of a better way of achieving that end.

**Mr Hayes:** Do you feel restricting a person or an individual on a shift or isolating him from other workers would not be a form of intimidation?

**Mr McKichan:** It seems to me that probably intimidation occurs on both sides. I'm sure there is as much union intimidation as there is, if any, employer intimidation.

**Mr Hayes:** We haven't had any really specific cases of that, though. We have the other way.

**Mr McKichan:** No, but nor can I speak to any specific cases on the other side. It seems to me that any situation like that is probably very much related to the situation whereby people's decisions are known and broadcast around. It seems to me this is at least as private an issue as that in which a vote is cast for a member of Parliament and it should be regarded with as much seriousness.

Goodness knows, a much bigger change in an individual's life can occur through the determination of whether to have a union than to elect a particular political party. I can't think of anything, as far as the individual is concerned, that is more important. I can't think of anything that's as much deserving of sanctity of that particular decision as casting that vote. It defeats me why we should not treat it with at least as much seriousness.

**Ms Sharon Murdock (Sudbury):** I know I have very little time, so I'll try and be quick. Actually, it's led nicely into the question I wanted. Hello, Peter, it's good to see you again.

It's the mandatory secret ballot vote and the point that you just raised in terms of electing members of Parliament, provincial, federal, municipal leaders or whatever. Two things: One, you're electing them knowing they are going to govern you for at least a period of time whereas the union, first of all, is simply a representation vote; two, in a normal general election of any kind, the votes are cast on a certain day and counted the same day.

We have heard cases here in the past five weeks where, in some instances, it's been 18 months before a certification vote because, as you know, anything under 55%, between 45% and 55%, has to have a certification vote. Those certification votes have taken as much as 18 months to two years in some instances to be counted. So the question is, where is the democracy, which has been argued faithfully? Where is it?

**Mr McKichan:** I'm sure it's within the wits of the legislators to devise a system of balloting and voting and counting that can be as expeditious as that governing provincial or federal elections, and I would certainly argue strongly in favour of that.

**Mr Phillips:** Thank you for the presentation. I appreciate the council's advice. I'll get to a question, but just as an observation almost for the retail council, this is the final day of five weeks of hearings and it's been, I think, an eye-opener for those who have been on the committee.

The Premier talks about the future of the province being linked to new partnerships between working people and the employers, yet I think, without exception, the union leadership who have come here before us have almost a loathing for the business leadership. I don't think a presentation has gone by without a comment from—the labour council of Brantford this morning said the labour movement has fought for improvement in the quality of life for the people of Ontario, ideas the corporate sector has fought so hard against. Yesterday we heard from the president of OPSEU, saying that the business community are simply spoiled crybabies.

That's very disappointing to me, because if we're going to have partnerships, I think there should be some mutual respect on each side, but it's clear that the labour leadership believes that the business community is not to be trusted.

My question really to you is this: This bill is going to pass. Hopefully there are some amendments, but it's going to pass. If indeed the future of our province rests on partnerships between working people and employers and government, can you give us any indication of how well the partnership is going to function in the months ahead after this bill is passed?

**Mr McKichan:** If the bill passes in its present form, we have the worst possible apprehensions about the atmosphere for management-labour relations. I think this bill will do more to destroy the quality of management-labour relations than any piece of legislation we've seen in Ontario

in recorded history perhaps, or at least within our lifetimes. I think it would be terribly destructive. I think it's a tragedy.

The province is facing the most difficult period in its history as it adjusts to the new realities of world trade. If we do that going into it with this deep cleft and schism between management and labour, we're sealing our own fate and we're doing it in the worst possible way, we're absolutely in a self-destructive mode. I would urge the members of this committee to reflect that view, to ponder that view and realize what's ahead of us, and it's grim. It's grim for this industry, it's grim for the employees in the industries that service us, and I hope that before it's too late, we have a second thought.

**Mr Offer:** Thank you for your presentation.

**The Chair:** More briefly than Ms Murdock.

**Mr Offer:** Third-party picketing: It applies to something much broader than the mall setting. It applies to licensing within the mall. Share with us your thoughts on the impact of that intrusion.

**Mr McKichan:** First of all, it does have an effect well beyond the individual business that is being picketed. I think it's true to say the average citizen, as his first priority in life, wants to avoid hassle, wants to avoid violence, wants to avoid destruction, and even wants to avoid embarrassment. Pickets appearing anywhere in a mall setting or in other types of shopping situations discourage customers from going near that area, whether it's in a mall or in a street setting.

I fear that not only will there be economic loss suffered by the business being the subject of labour dispute but also by the neighbours of that business and of course by the landlord who shares in the business. That's a reality of life and it's one of the reasons we're so concerned about it.

**The Chair:** Thank you, gentlemen, for speaking on behalf of the Retail Council of Canada and presenting its views here today. You've played an important part in this process and the committee is grateful to you. Take care.

**Mr McKichan:** Thank you, Mr Chairman.

1400

#### LONDON CONFERENCE OF THE UNITED CHURCH OF CANADA

**The Chair:** The next participant is the church in society committee of the London Conference of the United Church of Canada. Please come forward, have a seat, tell us your name and your title, if any, and carry on with your submission.

**Mr Timothy Dayfoot:** Thank you very much, Mr Chair. My name is Reverend Timothy Dayfoot. I was asked a few moments ago if there was a title connected to my name, and because I wasn't quite on top of things, I said no. It is Reverend Timothy Dayfoot. Turning to the submission, has it been distributed to all the members? I'll start, if I can, just by reading the submission that I would like to make.

I speak to you today as the chairperson of the church in society committee of the London Conference of the United

Church of Canada. I thank you for the opportunity to make this presentation and written submission in response to Bill 40, the government's proposed amendments to the Labour Relations Act.

In speaking to you today, I would like to give you an overview of what the church has said with respect to labour-management relations in our society. I would like to show you that the United Church of Canada has, in the past, supported the overall direction which is being taken by Bill 40, the amendments currently being proposed to the Labour Relations Act. That is the direction which allows workers greater participation in trade unions and free collective bargaining.

The United Church of Canada has long been intimately involved with the struggle for the rights of labour and the response of the community to issues raised by labour disputes. Fundamental policy was established in the 1930s and 1940s, the first decades of our church's life.

The United Church's defence of the right to collective bargaining developed early in our history. When it was asked by the general council, which is the United Church of Canada's highest court, to report on the church and industry, our church's board of evangelism and social service stated in 1932 that the cause of evil and maladjustment in the workplace may lie in the economic structure as well as in personal character. Christianity can only be made complete by the rectifying of both.

The report of the commission on Christianizing the social order from the general council argued in 1934, "It is essential that wage earners and employers, while the present conditions of industry exist, should bargain on equal terms through persons freely chosen by each group." The commission stated it believed that the threat to the rights of the "ordinary man"—the word it used, although I would say "person"—"lies in the fact that undue economic power is possessed by a few individuals." Collective bargaining appeared to answer this imbalance.

In 1938, the general council reaffirmed support of collective bargaining, as it did again in 1940. In 1942, collective bargaining was "emphatically endorsed."

In 1944, principles came home as the church had to decide whether or not to ratify a union shop or closed-shop contract with the printing trade unions at its own publishing house. The church decided to support the union shop, but avoided making a general pronouncement on the question of the closed shop.

In 1946, the general council took further action on the role of labour and capital in postwar industrial planning. The statements passed by that general council said that it "recognizes labour's right to strike, but only as a last resort and on decision, by secret ballot, of all employees concerned, and views with apprehension nationwide strikes, appeals to violence and sympathy strikes as endangering the public interest."

This measured position continued to guide the church's relations with labour during the postwar period. United Church laity in the trade union leadership served on relevant boards and committees of the church. A Religion and Labour Council of Canada was gradually developed,



which brought leaders and members of both sectors together for reflection and expression of joint concern.

At the 24th general council in 1971 a study was presented stating that the "role of unions in maintaining a necessary centre of power for those who would otherwise be powerless should be gratefully acknowledged," and that "unions should be urged to organize, where possible, the poorer elements of the workforce outside their present structures." Based on this study, the general council reaffirmed its endorsement of collective bargaining in a resolution.

The text of this six-part resolution appears in the first half of the appendix. I would like to read the first five parts of it, if I can:

"Collective bargaining, 24th general council, 1971, Niagara Falls, Ontario."

Be it resolved:

"1. That, in the light of present industrial organization and relations, the principle of collective bargaining is still the best means of enabling employer and employee to bargain on equal terms with the objective of securing economic justice. At the same time, in our free society, the church must affirm the right of all people to earn a living and the right to choose whether or not they will engage in the collective bargaining process.

"2. That, as a visible expression of the church's concern for economic justice, the United Church of Canada adhere to the following principles:

"(a) In any line of business, the publishing department, divisions, boards, departments and committees of the United Church of Canada shall, as a matter of policy, do business with those firms practising high standards in merchandising, competitive prices for equal quality of merchandise or service and, above all, fair labour practices, especially in the areas of wage rates and working conditions.

"(b) All persons in the church's employ be accorded the choice without prejudice to organize and bargain collectively.

"3. That this general council encourage conferences, presbyteries, presbyterials and congregations"—which are all the other courts of the church—"to ensure fair labour practices, especially in relation to wage rates and working conditions.

"4. That the general council of the United Church of Canada commend the labour movement for its social concerns as exemplified in the Canadian Labour Congress's new department of social concern, and urges the church at large to work in cooperation with labour and other sectors of society by participating in the common good of the fight against poverty.

"5. That this general council encourage the labour movement to continue and intensify its policy of supporting poorer elements of society in their struggle for a better economic life through the collective bargaining process."

The church, in the mid- and late 1970s, focused attention on the war against poverty and the struggle for labour rights of certain marginalized groups. The 27th general council in 1977 approved the recommendations of the task force on poverty, deciding to "reaffirm the support of col-

lective bargaining, and commend and support the work of those who would apply this principle to the needs of Canada's disadvantaged," and called on the church "to recognize and use the potential it has for providing mediating services to persons, groups and communities during periods of industrial strife, providing this is done from an informed, objective and sympathetic perspective."

In 1984, as part of the resolution called the Church and the Economic Crisis, the general council approved guidelines for continuing church action. A number of the guidelines affect labour relations.

I would like to read the brief summary of the labour relations guidelines from the Church and the Economic Crisis resolution, which appears in the second part of the appendix. This is from the 30th general council, which met in Morden, Manitoba, in 1984. This resolution spoke of the United Church of Canada's:

"(A) Support of policies which:

"(i) Place the needs for employment and wellbeing of people and sustainability of communities ahead of the free movement of capital;

"(ii) Move society in the direction of greater equality and increased security of income for the poor;...

"(v) Provide equal compensation for work of equal value;....

"(viii) Expedite methods of consultation, mediation and arbitration between employees and employers in seeking to avoid strike action in the settlement of disputes."

This resolution also said that the United Church of Canada should continue:

"(B) Opposing policies which:....

"(iii) Attack or reduce participation in trade unions and free collective bargaining."

This overview shows the United Church of Canada has had a long-standing interest in labour-management relations and, in particular, an interest in encouraging the benefits to workers which can be realized through participating in trade unions and free collective bargaining.

Our reading of the proposals being made in Bill 40 is that they are asking for the same kind of changes that the United Church has always promoted through its statements on labour relations, and therefore we would encourage the government to maintain the strength of these proposed amendments to the Labour Relations Act.

On a more cautionary note, our committee would like to say too that, at the same time we support these proposed changes to the legislation, there is a significant portion of our province's population whose lives may not be directly touched by these improvements. These groups in society, those living on social assistance, the homeless and otherwise marginalized people, are also constant concerns for our church. We look forward to you, the government, giving the same kind of attention and initiative to the problems these groups face as you are giving to our province's workers.

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**The Chair:** We have six minutes per caucus.

**Mr Hayes:** Thank you, Reverend Dayfoot, for bringing in a different perspective on Bill 40. We've had

arguments from labour, management and the corporate sector. They were coming, one representing labour, the other corporate, but you come here with a different perspective, where you're not a leader in any one of those particular groups. I think you have a very good understanding of the plight some workers have in this country—and in this world for that matter—who fight and struggle for decent working conditions and wages.

I feel so much better about this bill today, because the United Church and the report, the Church and the Economic Crisis, lead me to believe we certainly are heading in the right direction to bring these much-needed rights to people.

You talk about the people who are on social assistance, the handicapped and those people who go to churches or church organizations to get assistance when they can't get it elsewhere. Are you aware of, or have you met, people who have tried to join unions, ended up being harassed or intimidated or losing their jobs, and the hardships it has caused their families? Could you give us any examples of some of those cases? I'm sure some of these people must have come to you as their priest or minister.

**Mr Dayfoot:** Over my seven years in ordained ministry, I'm not sure if I can think back to an individual who has come directly to me as his minister with those concerns. It may be for a number of reasons. It may not be that it didn't happen, but often people prefer to keep the parts of their lives they consider not church, or secular, away from their minister/church-member relationship. They would be more apt to go to other family and other support structures rather than their minister for that. Even if I tried, I don't think that I could think back to a specific example of an individual coming to me.

**Mr Hayes:** That's okay. I'm sure if you were involved with any organizations or help groups, I think maybe you might see through those some of the hardships people have to face, just trying to put food on the table and to feed and clothe their children.

**Mr Dayfoot:** Yes.

**Mr Hope:** I'm just reviewing your comments here and then looking at what was said to us. I'm sure a lot of members of the church come before you and talk to you about problems that are potentially in the atmosphere. With the media attack on this proposal for social justice, I'm sure a lot of people are really wondering what the true effects are of this. We even heard from a professor from the University of Windsor telling us how the media, owned by Thomson—I notice you use capitalism or capital corporations as part of it. I'm just wondering about your consensus of the non-politically affiliated general public, whether it be business or union workers, the general population who come into the church.

**Mr Dayfoot:** I think we face the same difficulties right within the church as society in general faces with the dissemination of information and the biases and the prejudices which are always present in who is providing information and what kind of vehicle is used to speak. I would be the first to wonder whether all United Church members are even aware that this is the United Church's official

policy with respect to labour relations, over its history and currently.

The policy that is formulated here and disseminated in whatever opportunity there is within the church is made by, generally, the general council, which is made up of representatives from all across, and hopefully those general council commissioners, members, come from a wide variety of churches, wide walks of life, and are able to communicate where the church stands. The church therefore would likely conduct the same kinds of discussions and the same kinds of disputes as would appear within society in general when it is presented with media articles and presentations that would seem to scare those who think there is going to be a terrible disruption or an end of something that we think of needing security.

**Mr Offer:** Thank you very much, Rev Dayfoot, for your presentation. I must say I listened to the last question. I'm less concerned about how media reports the legislation, as they see it, than some very strong concerns I have with the legislation itself. I think it has been reported in a certain balance, but that will be, of course, in the eye of the beholder.

Right from day one, we have been dealing with the right of a worker to freely choose whether to join or not to join a union, to choose free of coercion and intimidation and be fully informed. It is clear that there have been and there are examples of intimidation and coercion, from both sides, I would think, in fairness.

It would also seem that we have an opportunity here to create a new process for choosing to join, where we can embrace that freedom in legislation with a freedom from intimidation. We have that opportunity here.

It would seem to me that the old way is not the way of tomorrow, but rather the way through a secret ballot where workers are given full information, where there are substantial penalties to either the union organizer or the employer, and if they interfere, they suffer. But we embrace the principle that the worker has the right to choose and if a majority of the workers wish to be unionized, so be it. I'd like to get your thoughts on that.

**Mr Dayfoot:** I think that from the perspective of the church and the perspective of our basis in Christian faith in the Gospels and the New Testament and the Bible as a whole, we have to consider always not just the rights of individuals, which are clearly important in the eyes of our faith, but also the rights of groups, communities, collectives, which are also presented in our basis of faith, the New Testament, in ways that aren't really easy to see in our own society. The earliest apostles came together in groups which are very much more like communes than what we are accustomed to seeing in our own society. So we, from our perspective in the church, do not overemphasize individual freedoms with respect to collective relationships and collective groups and organizations.

I can't see any way of making a policy statement which will always hold in all circumstances about how the practical details of the process should be worked out. Always we have to uphold the individual, but we also have to



uphold the rights of groups of people to grow and enhance the conditions for the whole group.

1420

**Mr McGuinty:** Reverend, I want to talk to you about the issue of replacement workers. I gather you're in favour of the provisions in Bill 40 which would prohibit the use of replacement workers. It's clear to me that in many cases this is going to cause hardship and I want to present you with an example and get your response.

There is a baker, a woman, who has operated a business for about 28 years. During the first 22, she built it up on her own and used friends and family members. The kids have grown up and they're doing their own thing. Now she has a half-dozen workers. She has contracts with hotels in town to supply them with high-quality pastries. Of course, the hotels count on receiving these. She has a small retail operation too. The six workers are unionized. Talks break down and they go on strike. I'm just inventing this. She wants to continue to run the operation. She can't do it alone. She can't operate what little machinery there is and perform the jobs. She can't bring people in. She was there for 22 years on her own. She put her time, her sweat, her capital into it. She wants to keep it going.

**Mr Dayfoot:** Our perspective from the church is that people can continue to relate even where there are disagreements, even where there is outright animosity, that we as human beings are compelled to continue to work together to work out our differences. I, myself, view the use of replacement workers as being something which hinders the motivation to work out, through the collective bargaining process, the dispute, the differences between the bakery shop owner and her six employees.

**Mr Turnbull:** Reverend, turning to your appendix regarding the general council, 1971, I will say that certainly the Conservative Party agrees with the last line of the fourth item: "the common goal of the fight against poverty." I want to ask you about the lack of studies by the government on the impact of this legislation. As I am sure you're aware, a study was done by Ernst and Young, a company which the government uses periodically for studies, I emphasize; it goes out and actively uses it. It is one of the leading companies in Canada for this kind of study. The study suggested that as a result of Bill 40 there would be something like 295,000 jobs lost.

We also believe—in fact we've made a freedom of information request—that the government has, internally, possession of a study which suggests that 250,000 jobs will be lost as a result of this. The Ernst and Young study suggested that in excess of \$8 billion will be lost in investment in this province as a result of this. How can you equate the goal of fighting against poverty with these numbers and the fact that the government publicly denies it has ever done any study, and furthermore refuses to do any study?

**Mr Dayfoot:** Studies are important, no doubt, and we should glean from them the wisdom which can guide us in making our decisions, but I feel that from my perspective as a person in the church, studies are not the be-all and the end-all, and that perhaps frequently, even more often than not, our heartfelt decisions on things that have to do with

justice and that have to do with the wellbeing of society and with where we are being led for the betterment of society and for all people will sometimes fly in the face of the figures that are produced in studies.

**Mr Turnbull:** Reverend, I am having difficulty in understanding how justice is served by having an extra 250,000 to 295,000 people in Ontario potentially losing their jobs as a result of this legislation.

**Mr Dayfoot:** I think the move towards justice and the desire to have justice served—we depend on our fundamental principles or where we see people being given power and equality to obtain and to work for what they see as their needs.

**Mr Turnbull:** At the cost of these jobs?

**Mr Dayfoot:** I don't feel that the fear or the warning of jobs being lost is sufficient in itself to say that there aren't sufficient grounds or there isn't sufficient reason to move in this direction.

**Mr Turnbull:** This morning we had a presentation from the Canadian Federation of Independent Business. They especially got down a gentleman who is on their staff in their Quebec office to speak about the impact that the legislation in Quebec, which is not as sweeping as this legislation, has had on the investment climate and the employment levels in Quebec since it was implemented. This has been at great suffering to the people in Quebec who don't have a job and don't have the personal dignity of going to their family and saying, "I've earned this money." They have to exist on handouts from the state. I respect the fact that you're making this presentation with all intentions of common good, but I'm hard pressed to understand how an extra 250,000 people out of work serves that good.

**Mr Dayfoot:** You are making a direct link between this legislation and the loss of jobs of 250,000 people.

**Mr Turnbull:** This study was about that. It wasn't about anything else. It was about the impact of this legislation.

**Mr Dayfoot:** I would say that is one factor we have to consider. We shouldn't dismiss or ignore any.

**The Chair:** I would say this, sir: Thank you. On behalf of the committee, we express our gratitude to the London Conference of the United Church of Canada, in particular the church in society committee, and to you, Rev Dayfoot, for your interest in this matter, for coming here to Queen's Park this afternoon and participating in this process. You've made a valuable contribution and we thank you. Take care, sir. Please have a safe trip back home.

1430

#### ASSOCIATION OF INVESTIGATORS AND GUARD AGENCIES OF ONTARIO

**The Chair:** The next participant is the security guards industry committee on labour reform. Those people who are going to be participating in the submission, please come forward and take a seat. I remind others that there is coffee and soft drinks at the side, so you can make yourselves comfortable and at home. Please proceed with your comments and try to save the last 15 minutes of the half-hour for questions, if you can.

**Mr W. Roy Fitz-Gerald:** First and foremost, I'd like to introduce the people at the table. Ms Deborah Coles is a vice-president of Wackenhut of Canada. Mr Ben Reiners is a vice-president of Burns International Canada. Our legal counsel is Mr Mark Ellis.

We have in the audience Mr Pat Bishop, representing Barnes Security; Mr Rick Josephson, Barnes Security; Mr Robert Robertson, Ontario Guard; Mr Harold Ball from Intertec Security; Mr Ken Shales, the president of our association as well as Cansicom Security; and Mr John Eischmid and Mr Tom Carmichael of Ensign Security.

We appear on behalf of the legislative committee of the Association of Investigators and Guard Agencies of Ontario. As chairman, I address you on behalf of a committee representing approximately 90% of the security guard industry in Ontario, which represents some 20,000 security officers in this province.

Today we wish to address with you our concerns about Bill 40, concerns which relate to such fundamental issues as jobs, freedom of contract, security of property, security of persons and, last but not least, the viability of our industry.

The security guard industry is a service industry. It employs over 20,000 people, most of whom are happy with their careers and livelihood. This government's Bill 40 will potentially cost Ontario as many as 10,000 of these jobs.

Why? Because the industry must provide an independent security force. Under Bill 40, which allows for the unionization of the security force by the same union which has unionized the workforce, no autonomy or independence can be pretended. Customers of the industry have already asked of its principal members, "If you cannot supply independent security officers, what is your value?"

Secondly, and as significant, our services must be provided at competitive rates. Presently, a healthy price sensitivity operates to provide service at reasonable cost. If the client is not content with the price or the service, the client will retain a supplier of services that fulfils its needs.

Not so under Bill 40. Under Bill 40, the new security guard company, as a successor employer, will be required to use the same security officers with the same wage and cost structure. Often a client wants to change contract services due to deficiencies of service provided by the present guard force. Under Bill 40, this will be virtually impossible.

Therefore, the three areas of gravest concern—(1) the provision of independent protection, (2) at an affordable price and (3) attendant good service—are all forfeit. The freedom of choice in selecting an alternative service is eliminated. This will radically detract from the viability of our industry.

When independent service, price and freedom of contract are so dramatically affected by the operation of law, clients will evaluate other options elsewhere. They have told us so. Clients will install electronic security devices, not security officers. These devices, when triggered, will require police response. The direct effect of this is increased demand on an already overtaxed police force and

increased expense to an already overtaxed public. As a result, the safety of people is imperilled, the security of property is diminished and, most importantly, the jobs of 10,000 people will be jeopardized. These are badly needed jobs.

Moreover, the proposed changes to the labour law will jeopardize (1) the security of property, (2) the safety of people and (3) the officers themselves.

It is understood that behaviour cannot be legislated, but the security guard industry is in the business of monitoring behaviour with a view to the safety of people and the security of property. Unfortunately, the threat to security of both often develops when an adversarial relationship develops during contract negotiations between our clients and their employees. Therefore, although often harmonious, the relationship between the workforce of that client and security staff employed by our industry to monitor the property is adversarial in interest.

No one can maintain that the labour relations law should create a conflict of interest ensuing from the adversarial nature of the workforce versus security, yet Bill 40 will do just that. The proposed reforms will sponsor that very conflict of interest. For example, a union will be allowed to certify the workforce, including the supposedly independent security officers present in the workplace. Union members owe a direct allegiance to other union members, thus the well-known axiom "solidarity for ever."

A security officer owes rather a different allegiance, created by legislation. The security officer's duty is to the purchaser of the security services, the officer's employer's customers. The conflict is self-evident and dangerous. If the safety and security aspect of the now less-than-autonomous officer is suspect, the guard's value to the community, the customer, the employer and the workforce itself is forfeited.

The risk to Ontario's public is of major concern. Take an example: Assume a major automobile manufacturer has a major labour dispute with its workforce. Suppose that under Bill 40 the security officers have been unionized by the union of the workforce. After the statutory gestation period, the workforce strikes. The security staff, a non-essential workforce, strikes with the brethren or, where the bargaining unit is separate, refuses to cross the picket line. In a non-strike atmosphere, security is essential. In a strike situation, it is imperative. Replacement workers cannot be engaged. The very personnel retained to secure the property and ensure the safety of all workers are left in an adversarial position to the interests they were retained to guard.

Change the scenario. Assume that Bill 40 is interpreted to allow for the maintenance of security by the security guard union members during the strike. In pursuit of their statutory obligations, the officers report unlawful or dangerous behaviour of their fellow union members from the automobile plant. During and after the labour unrest, the security officer will be alienated from his or her fellow union members for siding with the employer.

Even more dangerous is the natural propensity to turn a blind eye to the infractions as a result of the fraternal obligation expressly shared by union members, thereby placing life, security and safety in jeopardy.



Moreover, those who might suggest Bill 40's approach to safety in the event of a labour strike are wrong to suggest that the employer should apply to the union for its consent of the board for approval to bring in workers for security of property and safety of personnel—this borders on the absurd. The turnaround time in the event of danger does not allow for applications, burdens of proof or otherwise. For instance, no citizen of Ontario wants to theorize on the possibility of industrial explosion while the employer and the security company seek the consent of the union or board approval.

1440

In summary, the true cost of Bill 40 to Ontario cannot be estimated. The security guard industry is concerned that 10,000 employees will lose their livelihood. Indeed, the industry will fall prey to an understandable corporate psychology: "If independent security is not available involving people, we will use electronic systems." The sophistication of off-site monitoring already allows a Dallas, Texas, security company to monitor a plant in Ontario, with the alarm response supplied by use of local police at taxpayers' expense.

Ironically, Bill 40 advances remote technology over jobs, at a direct cost to the safety and security of people and property in Ontario. This flies directly in the face of recent findings of the office of the Solicitor General of Canada, which reports that the number of public police in Canada will remain static or decrease in this decade. Bill 40 will contemporaneously shrink the number of security officers, further burden the police and imperil property and people in Ontario.

Before concluding, a further remark of the Solicitor General of Canada should be noted, that the future can only be secured by treating the public and private policing sectors as an active partnership. Bill 40 will tax the public police and dramatically prejudice the growth of autonomous private policing. In short, labour law should not compromise the position of trust and impartiality held by the security officers in pursuit of their duties. We believe that Bill 40 does.

It is our intention, if allowed, to make a further written brief, delineating further concerns with regard to Bill 40. Our submissions are made with respect, with an attendant request that Bill 40 be amended or delayed to take into consideration the unique position of trust and impartiality of the security officer in the workplace, the dramatic effect that this legislation will have on job loss and, most importantly, the negative consequences to property and people in Ontario.

**The Chair:** Thank you, sir. Five minutes per caucus.

**Mr Offer:** Thank you for your presentation. This is an issue which I think you will know we have heard many sides on. I wouldn't say "both sides," but "many sides." Even today, you bring a new slant to it by talking about the technology of the issue and what the real impact will be, because of the available technology to monitor without an actual person or persons having to be on the premises.

I think you might be aware that—I think it was in the first or second week of these hearings—a presentation by a

representative of the Steelworkers union, if I'm correct, indicated that as soon as this bill is passed the Steelworkers are going to embark upon a campaign to organize these security guards in this province. We've also heard this is the only province in this country that has this separation of security guards from other units.

I'm wondering if you can share with us your thoughts as to the experience in Ontario in contrast to other provinces.

**Mr Fitz-Gerald:** I would ask Ms Deborah Coles to respond.

**Ms Deborah Coles:** I think you'll notice that in our presentation we don't address the issue of union versus non-union. Our belief is that there may be ways to do this but that the prime issue here is maintaining the separation of security from other persons in the workforce, whether that is by changes in this particular legislation or by different legislation or whatever.

The prime concern here is that individuals have to be able to enforce regulations and have to be able to feel that there is no two-way street, that they're not being pulled in both directions when they are asked to enforce regulations. Many people have an idea of a security guard as being something little more than a night watchman. Yes, the night watchman still does exist, and the night watchman is not the person we're concerned with here.

The persons we're concerned with here are the people who are involved in highly industrialized, highly technological atmospheres, where they are representatives of the employer, where they must enforce fire regulations, fire route parking regulations, driving regulations, within a vast property, where they must report breaches of such safety and security issues to the employer, and in some instances, I guess, possibly to the union representatives—the union stewards or whomever it might be—in regard to breaches by certain individuals within bargaining units.

One cannot be a member of a bargaining unit and also be the one reporting to higher-ups on breaches of rules and regulations, safety and security issues or whatever. This is our major concern.

**Mr Offer:** It seems your response is that you feel strongly and deeply that there is an inherent conflict for a security guard being in the same unit as the people whom the security guard has been charged to monitor.

**Mr Fitz-Gerald:** Absolutely, sir. I don't believe there has been an impact study on Bill 40 in the first place. Secondly, we're presently licensed under Ontario legislation, the Private Investigators and Security Guards Act, which specifically states our security officer is a person who patrols for the protection of life and property.

Secondarily to that, we have the Ministry of Labour labour standards branch which oversees anything which could be construed as impropriety on the part of the employer. We have a civil rights commission. I see no benefit in the implementation of Bill 40 as it relates to our industry. I think it's self-destructive to our industry.

**Mr Turnbull:** You certainly raise some very important points. Obviously, there is a conflict of interest.

**Mr Fitz-Gerald:** Absolutely.

**Mr Turnbull:** That's well demonstrated by the situation. As you've already heard the NDP state, in every other province in Canada security guards are allowed to be within the same union. Do you have any experience which you could reflect on as to how that has worked or not worked?

**Mr Fitz-Gerald:** Do you want to take that one, Ben?

**Mr Ben Reiners:** We are operating in various provinces in Canada, and you're quite correct, that is the case. But I also must emphasize that this very inclusion in the bill for security officers to be unionized also has in actual fact created conflict. Quite often what happens is that the employer has an option during a labour dispute to either put his in-house staff on leave or put them inside the premises, and the external parts of the premises are controlled by an "unbiased security supplier."

**Mr Turnbull:** So do I understand this correctly, that while the NDP is suggesting that this is the way it is in other provinces, it really, truly isn't that?

**Mr Reiners:** It is not.

**Mr Turnbull:** They are allowed to put other people in during the course of a labour dispute.

**Mr Reiners:** They are. But also, most importantly, even if they do have a staff, they also always make a physical segregation of the security staff from the picket lines or avoid a confrontation with their workers, for the very reason that conflicts do develop and the employer tries to avoid that during a strike situation so that it can re-establish a harmonious relationship after the labour dispute has been settled.

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**Mr Turnbull:** It seems to me that one of the many problems with this legislation is that by allowing the security staff the right to decide that they're not going to cross the picket line, you raise the possibility of management having to be directly behind the gate. That, to me, would seem to be quite counter to the stated goals of this bill in terms of raising tensions at the very time one would want to calm them.

**Mr Fitz-Gerald:** Even in Ontario, if there's a labour dispute, the purchaser—or the client, if you like—will move his current, even contract, security force inside and doesn't have them out in line and will bring in an external contract security to do the perimeters. They know full well that if the officers are working in the plant on an ongoing basis, albeit they are contract, there will be conflicts during and after the strike or after the labour unrest is resolved; therefore, they want to avoid this. We go to great lengths to ensure that we do our job and at the same time avoid conflict.

**Mr Turnbull:** I wonder if I could ask a question of Mr Ellis. I recognize that Mr Ellis is a labour lawyer but, Mr Ellis, what would be the impact for liability to an employer if something were to go seriously wrong at a time when the security guards had refused to cross a picket line?

**Mr Mark Ellis:** Mr Turnbull, may I answer another question placed both by you and Mr Offer first and then move to your question?

**Mr Turnbull:** Yes.

**Mr Ellis:** The first question is, why are there different regimes operating in Canada where unionization is allowed? The answer to that question, in my opinion, in my submission, is that those regimes are radically different and they recognize the absolute necessity, for the safety of the workplace, to have a separate regime for security guards in the workplace. To have it in this bill is the wrong place for it, and the wrong script, in my submission.

To move to your immediate concern, which I think is a heavy one, the answer is that if the quid pro quo for supplying and asking for services to be rendered by a securities company is safety and protection, if what you're buying is safety and protection, the fact is that under Bill 40 the ability to provide safety and protection is radically altered. I think the answer is that if liability ensues for loss, damage, loss of life or any of the other resultant damages that may well and practically occur under this bill, the result will be liability to the security company and the employer.

**Mr Ward:** I'd like to thank you for your fine presentation on behalf of your association. First, a comment: You mentioned that during a labour dispute, tensions rise and there is potential for a conflict between security guards onsite and the employees who have withdrawn their labour. It seems to me that the replacement worker restriction, which is designed to ease that tension, should make the life of a security guard that much better during a labour dispute, because the tensions that are currently in existence under the act as it is today should be lessened to a degree.

The question I have is that you mention potential job loss of 10,000 employees out of the 20,000 current number, a 50% reduction if Bill 40 is implemented, which allows security guards, if they so wish, to be organized and to choose a union that they think is best for them. How did you arrive at that number of 10,000? I'm curious.

**Mr Fitz-Gerald:** We mean 50% of the known licensed security officers, and this only touches upon the contract security officers, which I think you could rightfully double if you took into account the in-house security personnel, because they'll simply be replaced by electronics. Why would a third party, our client, want to put up with an aggravation of some situation that develops between us and our union if Bill 40 were to pass? Why would a third party want that aggro, when he simply says: "Enough. I don't want people. I'll use electronics. I am not third party to your disputes with your union."

**Mr Ward:** So you have research and statistics that show where this number comes from?

**Mr Fitz-Gerald:** The 20,000 employees?

**Mr Ward:** No, the 10,000 job loss.

**Mr Fitz-Gerald:** It's our best guesstimate as an industry in discussions with our clients present, who say that if Bill 40 goes through, they're going to have to seek alternatives, and there's enough of it happening.

**Ms Coles:** I think the other point on job loss here is the fact that clients will no longer have the ability, when they feel it necessary to reduce costs, to do so under the



successor rights section of this act, where any new contractor coming in would become a successor employer.

Traditionally, the way people cut costs is by cutting wages, reducing the number of guards who are working at a particular location, changing the hours of coverage: one of those scenarios. The way the current legislation is proposed and the way it has been interpreted for us, none of this would be possible. Any new contractor coming into a client location would have to offer the same wages and benefits, the same employees, the same hours of work. Therefore, if a client wants to reduce costs, the way to reduce them is to cut out the people and put in the electronics.

**Mr Hope:** The question I have deals with the presentation itself, because you used an automotive plant. I used to be and still am an auto worker and still belong and pay my membership dues. You use that example and call it solidarity for ever. The first thing I don't want is anybody stealing from my employer, because the tools they'll probably be stealing are the tools I use to perform my job. Health and safety is a factor that all trade unionists believe in, and we're not about to see anybody do that.

When you talk about confrontation on the strike lines, you make it sound like we go out there and beat up on everything possible. I remember a number of strikes, one that lasted about eight months, where we were cooking hot dogs with the security guards over the top of a barrel, when we were burning wood. Your labelling of the workforce and the confrontation that grows I don't think really exists, because our confrontation is not with the security guards. Our confrontation is with the employer and the bargaining aspects of the employer.

Your labelling in your presentation, showing major confrontation at every strike that occurs, is unrealistic. Where we get into confrontations is when they bring trucks by and try to pull machinery out. That's where the confrontation is, and nine times out of 10, they don't increase the security. They have their private eyes already walking around with their video cameras. What they do is bring the special task force in with their billy clubs and make sure they can get people in and out.

I was also curious if your organization, your association, happens to be one of the ones that is providing professional security and busing people in and out of plants. In a presentation in Kingston, we were notified of a security company—I don't know if it's affiliated with you—that helps bring replacement workers in and out of workplaces.

**Mr Fitz-Gerald:** Mr Hope, you've asked a lot of questions within your rhetoric. There are certain elements of truth and certain elements of misleading information, but I would like to ask Mr Mark Ellis to respond.

**Mr Ellis:** Mr Hope, I just would like to clarify for the record that your description of what is contained in the materials is inaccurate. There is no suggestion of anyone beating up anyone. There is the suggestion that Ontarians believe that in a position of conflict, which strikes are, because they are in essence an area where two parties that are adversarial in the circumstances are seeking relief,

security must be maintained. That's the job of the security guard and a very awkward one at that.

**The Chair:** I want to say thank you to the security guards industry committee on labour reform. You've provided us with some unique insights into your industry and your views on the impact of Bill 40. We're grateful to you for participating in this process and we thank you.

**Mr Fitz-Gerald:** Thank you, Mr Kormos, and your committee.

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#### TORONTO SUN PUBLISHING CORP

**The Chair:** The next participant is Paul Godfrey. Tough having to press the flesh, ain't it?

**Mr Paul V. Godfrey:** I've often been accused of clearing a room, but I didn't think I'd do it that quickly.

**The Chair:** I was hoping once you've finished, maybe you and I could step outside and get a photo together.

**Mr Godfrey:** Absolutely.

**The Chair:** I've got the right connections. We might end up on page three.

**Mr Godfrey:** We're always glad to take pictures of you, Mr Chairman.

**The Chair:** I'm sure of that.

**Mr Godfrey:** Thank you very much, Mr Chairman and members of the committee. My name is Paul Godfrey. I am the president and chief operating officer of the Toronto Sun Publishing Corp. With me today are lawyer Alan Shanoff, who has represented newspapers and other media for the past 15 years, and my executive assistant, John Rowsome.

I appreciate the opportunity of making this presentation before this standing committee. This is the first time, I think, in my eight years as either a publisher of the Toronto Sun or now as president that I've been before one of these committees. I appeared here in another life on many occasions, making representation on behalf of Metropolitan Toronto.

Our first newspaper, the Toronto Sun, was born out of the labour pains of the now defunct Toronto Telegram, a newspaper which had a long and proud tradition of community service. As I wrote in a recent letter to Premier Bob Rae: "The Telegram folded in broadsides of accusations about miscalculations and bluffs by union and management. Our day-oners were burned in this cauldron of labour difficulties and believed fiercely that the rules governing unions and management be fair and firm for all concerned."

So on such matters as this piece of proposed legislation, we truly care about consultation and about workers knowing exactly what they're getting into. We also care about tilted playing fields and remedies which are fair, practical and equitable for all those concerned.

Since 1986, two books listing the 100 best companies to work for in Canada have been published. Our company has made the list in each volume. I would like to quote from several passages.

"Working for the Toronto Sun has many advantages....a relaxed, unstructured environment and open management. This kind of free and easy environment is only possible in a non-unionized shop, and it certainly has advantages. A sales representative, for example, says how much he enjoys having access to his ads in the composing room....the flexibility of the whole system is outstanding. Loyalty to the Sun is secured and maintained through a promotion policy favouring internal candidates and a benefits package that looks after all necessities, and gives employees a stake in the company as well....the total compensation package is only considered the icing on the cake for most Sun employees. The Sun represents more than a job. It's a way of life."

The Sun was founded 21 years ago without any government assistance and became a North American success story because of the involvement of and relationship with our employees. Staffers come from all walks of life and from almost all corners of this province. None of our 2,216 full- and part-time Ontario employees are unionized, and while they are employed doing all manners of jobs, they share a common pride in contributing to and being part of our company.

In Ontario, our companies produce the following publications. I think it will be a surprise to some of you what we own and operate. On a daily basis, the Toronto and Ottawa Suns, the Financial Post and the Kenora Miner and News. Weekly newspapers include the Strathroy Age-Dispatch, Paris Star, Brantford Real Estate Advisor, the Amherstburg Echo, the Ontario Farmer and Harrow This Week, and the following magazines: the Western Dairy Farmer, Ontario Dairy Farmer, Ontario Hog Farmer and London Business. We also have commercial printing facilities in Toronto, Ottawa and London.

Our newspapers do not speak on behalf of big business, big unions or big lobbies. While we are non-union, we have supported some strikes, but we are against excessive demands made by some unions. We have been very vocal over governments, unions or employers who ride roughshod over union or non-union staff and the public.

Our company is pro-employee and pro-individual. We are not naïve enough to suggest that either employers or organized labour are the saviours of society, and neither should anyone else. We do feel compelled to speak directly to the legislators of this province on this occasion, in addition to commenting through the traditional route on the pages of our newspaper, because we see aspects of the proposed amendments as very extreme and very one-sided.

The bill makes the case that a collective bargaining group can better serve employees. As a person who has experienced working in both a collective bargaining environment, as a former chairman of Metropolitan Toronto council, and presently in a non-unionized organization at the Toronto Sun Publishing Corp, I can attest at first hand that this premise is not accurate. We do not need a union to protect the rights of our individual employees. At the Toronto Sun, the rights and wellbeing of individuals are paramount, as is their voice.

The purpose clause that is built into the amending legislation is designed to be reviewed when interpreting the act. As such, it is of prime importance. This clause states that collective bargaining will enhance or improve terms and conditions of employment.

If present conditions for workers have become so poor, surely the most effective way for the government to remedy the situation would be across the board, so all employees of this province, whether they be the 19% who are unionized in the private sector or the rest of the workforce, could benefit equally. The most appropriate statutory avenue is the Employment Standards Act, as opposed to the Labour Relations Act.

Bill 40 tells us that Ontario employers cannot and do not adequately protect and instill a proper standard of employment or fairly compensate their non-unionized employees. Surely our company is not the only exception to this premise. In any event, is it not the Employment Standards Act which is empowered to deal with these matters? After all, is this not the act where workers, both union and non-union, are protected in such areas as working hours, overtime pay, vacation pay, termination notification, severance pay, pregnancy and maternity leave and so on?

The purpose clause also leaves the clear message that unions and collective bargaining will be good for the economy and will make things better for all. The architects of the amendment package believe that it is beneficial to the economy to have more unions and collective bargaining, but where is the case for this? Where are the facts and figures for this? There are some 600,000 people out of work in Ontario already. Dare we risk increasing this number or contributing to a delay in a return to a healthy economy?

We have, over the past several months, heard from a number of economic analysts and business persons who warn that Bill 40 will create the most comprehensive and restrictive labour relations legislation in North America. They conclude that this will result in a curtailment of needed investment in our natural resource and manufacturing sectors and add to the lack of confidence consumers already have in our economy. Where is the economic advantage this legislation is purported to bring to Ontario? What will Bill 40 do to create needed jobs and capital infusion?

We believe that the risks are too great to proceed with the amendment package. This is vital, given the fragility of the economy, coupled with the new competition created by the recent signing of the North American free trade agreement. The last Ministry of Labour quarterly report released in mid-August stated that Toronto alone has lost 37,000 full-time jobs in the last year, Ontario as a whole lost 68,000 full-time positions, and it now takes 22.8 weeks to find a job versus 18.1 weeks just a year ago. Clearly, the government should be putting up a sign on Ontario's door reading "Open for investment," not padlocking the door to future investors.

We will not present all our concerns regarding the amendments but rather will concentrate on the certification process and the rights of workers.



Individualism and the rights of individuals are important to us. Employees should have the right to decide this issue for themselves, free from undue interference or influence from any source. These rights are not being protected when employees may be forced to belong to a union.

Under Bill 40, the ease by which a union can be certified is such that employees who do not want to belong must belong. The bill does not require a secret ballot, eliminates post-application petitions and eliminates the adequate membership support condition in a case of perceived unfair practice. In the process, this legislation will give the Ontario Labour Relations Board the power to certify a union even if the required level of support is not met. In short, these amendments will alter the certification process from determining the true wishes of employees only to facilitate union certification.

Our company is convinced that a secret ballot on the wishes of employees is essential before a union is granted collective bargaining rights, or to accept a contract, or to go on strike for that matter. A secret vote is vital to the integrity of the process and acknowledges the right of the individual. Surely this does not need to be debated at length, since the secret ballot is the cornerstone of democracy.

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We also urge the adoption of standards in the legislation to require complete disclosure to employees during union sign-up campaigns. Post-application petitions should not be eliminated, because this is a process by which individual employees can express their desire not to join a collective bargaining unit. Furthermore, employees are often unaware of a union organizing drive until after the union has made an application. The elimination of a petition may leave these workers without a vote, potentially thousands of employees disfranchised.

Changing the rules so that an employee cannot change his or her mind unless there is an actual vote and deleting the requirement for the payment of a \$1 membership fee abrogates the rights of workers. Their rights under the bill can be taken away too easily.

Individuals should not lose rights to personally represent themselves based entirely on membership cards signed in often confusing and pressure-packed circumstances. Certainly with the proposed elimination of the petition safeguard, it is absolutely imperative that employees have an opportunity to think about the implications of joining a union.

That, as I understand it, was the reasoning behind the \$1 membership fee. Rather than eliminate the fee, it should in fact be increased. Without a union card fee, an employee may sign without understanding that the card represents a decision to join a union. It's bad enough that the present system is archaic because it does not ensure that sufficient information is provided for an informed decision.

Ontario consumer protection legislation allows individuals 72 hours to change their minds upon signing a contract. Bill 40 does the opposite. Once an employee has signed up, he or she is unable to change his or her mind, as the provisions for sober second thought and a cooling-off period have been discarded. It is bitter irony that consum-

ers in this province have more rights than non-unionized employees.

Perhaps the most glaring example of how the playing field has been tilted revolves around the convenient and subtle rule changes to the certification of bargaining units. New amendments establish procedures to best accommodate union membership counts as they relate to employees at different locations, as well as the inclusion of part-time workers only when it suits the vote in favour of union certification.

Can anyone give me a plausible explanation why we should count votes if in favour of a union and not count them if opposed? This is precisely what the legislation would have us do. This amendment is at the same time inequitable, intolerable and inconsistent.

The present act forbids an employer from "promises" or "undue influence," but union organizers can promise or pressure at will. The amendments would handicap employer-employee negotiations by holding the employers or owners to a higher standard than paid union negotiators. Let the employer slip in what is promised, and the union may be certified automatically. Automatic certification if an employer or his agent makes a mistake may result in a union being imposed against the wishes of a majority of employees.

The bill clearly states that the board will not, as at present, have to determine if there is adequate membership support. On the contrary, the mandate will be to certify the union because a mistake has been made. How is this fair to the individual rights of workers? How many businesses, big or small, have in-house legal expertise to help them avoid any unintentional contravention of the act? Not many, I am sure; certainly not in our companies outside Toronto.

Ontario has prided itself on developing an equitable framework for labour relations; however, the amendments contained in Bill 40 do the opposite. The rights of the individual worker have been replaced by the government's desire to give a monopoly to the union side of the ledger.

I have spoken only of the certification process. Do not take my silence on the other parts of this bill as acquiescence; it's a sign only of the time constraints. In fact, there are so many changes being proposed that collective bargaining will be for ever altered, to the detriment of all Ontarians. These changes include abrogating property rights to permit access to private property, increasing the powers of the Ontario Labour Relations Board and arbitrators, requiring midterm collective bargaining over group terminations and imposing first contracts, to name just a few.

On the matter of banning replacement workers, which is not to be confused with strikebreakers, I fully endorse the Canadian Daily Newspaper Association's brief on the unfair and dramatic effect this will have not only on our industry but on a number of essential services and social agencies. Passing the replacement worker provision could cripple or destroy a newspaper.

These changes collectively are so pervasive as to dramatically and negatively alter the playing field for ever.

We urge you to withdraw these amendments. If constructive collective bargaining is to take place, there must

be no doubt at all that the majority of workers support the union. Surely, if this is not the case, the sour harvest will be bitter strikes, acrimony in the workplace and disruptive first collective agreements.

Mr Chairman, thank you for this opportunity to address this committee on this most important issue.

**The Chair:** Thank you, sir. Four minutes per caucus. Ms Witmer.

**Mrs Witmer:** Mr Godfrey, thank you very much for your presentation and the insight you have provided from your perspective. I appreciate the time you have spent talking about the infringement of the rights of the individual worker. It's certainly an issue that our caucus has been very concerned about.

I'd like to ask you a question. Some people have expressed to us the concern that the Premier and the government do not fully understand the economic impact and consequences of introducing Bill 40. In your position, what do you believe the economic impact will be in this province?

**Mr Godfrey:** I really think that this proposed legislation is the greatest roadblock to economic recovery in Ontario. We have a crippled economy. We can tell through the help-wanted ads of our newspaper that there are very few people hiring today. If there are investors out there, and I believe there are, they will not look to Ontario, they will not come here, if this bill passes. The fact is, there are plenty of locations to go to in this country and other countries. If investors compare the labour legislation here in Ontario to what other provinces and countries have to offer, this legislation will prevent the normal recovery that is essential for Ontario.

**Mrs Witmer:** There seems to be an obstacle to recovery and this bill certainly contributes to it. Certainly, there are people who have indicated as well that the reason we have a problem today is because of the process used by the Premier. Unfortunately, Premier Bob Rae had an opportunity, unlike any other Premier in this province, to establish a very cooperative relationship between labour and management, and that has not occurred. What could he and the government now do to help build that cooperative relationship?

**Mr Godfrey:** I think we're at a point at this present time that what is essentially needed is a cooperative venture between government and the private sector. One of the greatest and biggest olive branches that can be given at this point in time would be for the government to indicate that it is more important to proceed with economic recovery and to join with business in getting the economy rolling again and delaying or deferring or withdrawing this legislation. I think it would show the private sector and the entire business community an act of good faith, an intention that the government's first priority would be to work with the private sector in order to create jobs in this province.

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**Mr Huget:** Thank you for your presentation. Your industry is indeed a fascinating one, and I must say I've had some involvement with it in my past. In my youth I was

involved in front-line distribution, I guess, or more affectionately known as a paper-boy. So I don't have the experience that you do in the industry, but I enjoyed that.

**Mr Godfrey:** It's a great way to start.

**Mr Huget:** I'm fascinated by the industry. The question I want to ask you is, there have been views presented to this committee in terms of the coverage by the media on this legislation, and the views that have been expressed have been ones that I guess say that newspapers have evolved away from what was their original purpose, in terms of being independent, unbiased reporters. The views have been expressed by a few people that newspapers have evolved to a different thing now in society. They're very much, in some people's view, a mechanism to deliver readers to advertisers, much in the same way that television, for example, has evolved into something that delivers viewers to commercials.

There has been at least one and possibly other subtle sorts of implications that because of that connection with the advertising sector and the business sector which does the advertising, it would be impossible for the media to report this thing unbiased. I've been listening to those views and I think the committee owes you an opportunity to express your viewpoint on that issue.

**Mr Godfrey:** I'm delighted to do that. I spent 20 years in public life and had, like many other people in public life, a certain view of how newspapers functioned. I've now been part of the newspaper business for eight years. One thing I learned almost on day one is that there is zero relationship in my newspaper and all other newspapers that I've come into contact with, our competition, those that belong to our chain of newspapers; that editorial and advertising have no relationship whatsoever.

Should advertisers try to impose their wishes on editorial, they will find themselves left out in the cold. If an advertiser threatens us in any way with withdrawal of advertising if a certain story is written or a certain slant is taken on a story, we say to the advertiser, no matter how big or how small, "There's the door; we'll see you around."

I can assure you and the other members of the committee and the public at large that the editorial writers who work for our newspaper and who work for our competition couldn't care less who advertises in our paper, or whether they advertise. They report the news as the news breaks. Our columnists give their own individual opinions, no matter what the newspaper policy happens to be. Columnists quite often attack the publisher, the president, the chairman. In our newspaper that's sort of one of the great features, that the editorial page, the editorial as such, will take one position and a columnist will take a dramatically different position. I can show you at least half a dozen individual articles where I have stated something in the realm of my public activities, only to have a columnist who happens to work for me brutally attack me. That's considered fair game in our newspaper. So for anyone to even think newspapers would possibly consider worrying about what an advertiser thinks, you'd only have to be under our roof for less than 24 hours to realize that's not the case.



**Mr McGuinty:** I'm confident, of course, as you probably are, that Bill 40 will shortly become law in our province. Our motion to extend the hearings was defeated earlier today.

I want to touch on an important shift that Bill 40 represents, an important shift in public policy in this province, something which is, to my understanding, without precedent. That is the issue of public safety, the public interest.

Bill 40 provides that, more often than not, when there is a situation calling for the continuation of workers to keep working, because it's in the public interest, because it's for the public's safety, that will become the subject of negotiation between the employer and the union.

For instance, we've heard from professional engineers who are required—one example was given—to monitor the chlorine levels in a water system. We've heard from children's aid society workers who are concerned with the welfare of children. We've heard from the Municipal Electric Association, which is concerned with maintaining a reliable supply of electricity. All those people and many others are mandated by law to keep the public interest, public safety, paramount. Suddenly, this is becoming the subject of negotiation. I just wanted to get your comments on that.

**Mr Godfrey:** As I indicated before, I limited my remarks to those affecting the Toronto Sun and our industry certification and the protection of the individual. I've read a considerable amount about this proposed piece of legislation, and there are many aspects of it that worry me. There is no doubt that suddenly there will be many new factors in the whole question of the factor of the safety of individuals which probably were not seriously thought about when this bill was being considered. I think there are many pitfalls the bill has and this happens to be one of them, this whole aspect.

I've read about the presentations made by some of the other organizations that have come forward with respect to the welfare of children, and I've tried to read their briefs as well. I must say that I must concur in that.

The questioner indicated that the bill would likely pass. I really think, and I would hope, that the democratic process, the decision of the Legislature and the position of the government, would at least, before drawing a conclusion, hear all the briefs out before making the decision.

For instance, we have thousands of coupons that have been sent in to the Toronto Sun. We put a coupon in our paper and asked readers to communicate with us. Our business editor has bagfuls of them, from readers, from non-union workers, from union members, who have all made points, who have all given their little message about such things as public safety, about replacement workers, about certification. There are thousands of people out there who are much more concerned because their own lives are going to be impacted who really do not have either the ability, the time or the knowledge of how to get their views in front of this committee, in front of the Legislature. I think members of the committee should be aware of that. As I said, the concerns of the employees of our organization are of prime importance to us. Without them, we could not get our paper out almost every day of the year.

So it's really important that their wellbeing be protected. That's our greatest asset. That's the thing we want to protect.

Although that's important—and it's important to many—it's equally important or even more important at this point that the economy be given the full impact of everyone's attention. The economy is not going to get the full impact of everyone's attention if this bill is passed. All the potential investment that is there goes to other provinces, other jurisdictions. I truly worry about what's going to happen to Ontario in the future if this legislation is passed. I would hope a decision hasn't been made yet.

**The Chair:** I want to thank Mr Shanoff, Mr Rowsome and you, Mr Godfrey, for your interest in this matter, for attending here today, for your participation and for the most valuable contribution you've made to this process.

**Mr Godfrey:** Thank you very much, Mr Chairman and members of the committee, for the opportunity to appear.

**The Chair:** Take care.

1530

#### ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

**The Chair:** The next participant is the Ontario Secondary School Teachers' Federation. Would the people speaking on behalf of OSSTF please come forward, have a seat in front of a microphone, tell us their names and titles, if any, and proceed with their comments. Please try to save the last half of the half-hour for exchanges and questions. Go right ahead.

**Ms Liz Barkley:** We thank the committee for giving us the right to speak and of course we hope you weigh our position as you will weigh all others.

We have part of the leadership of the Ontario Secondary School Teachers' Federation with us today. My name is Liz Barkley. I'm the president of the OSSTF. Earl Manners is the vice-president. Bev Wilson is the president of the office and clerical workers of District 8, Hamilton. Malcolm Buchanan is the director of organizing.

Bill 40, as you know, has provoked a furious response from the business community. Large coalitions of business interests have launched a concerted, and I might add a very expensive lobbying campaign against the present government's efforts to enact, in our opinion, responsible labour legislation. The attacks have been vehement to the point of hysteria. As we just heard, there are fear tactics and over-statements involved on a continuous basis.

One has to wonder if this campaign is not part of a larger plan to ensure that a social democratic government never again comes to power in Ontario if business has its way. This might account for the rather unthinking support of the two other political parties for the business lobby's campaign to delay, discredit and defeat this bill.

Much of the vitriol has been anti-union rhetoric. There is a definite attempt to make the words "union" and "labour" sound threatening. In all of this media propaganda against Bill 40, one should replace the word "union" with "workers," "people," "citizens" and "supporters of families." Union members are husbands, they are wives,

they are fathers, they are sisters and they are our brothers. They are our sons and they are our daughters. They are the breadwinners.

As I have stated, The Ontario Secondary School Teachers' Federation is pleased to have this opportunity to address the standing committee on resources development on Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment.

I will now turn to my vice-president, Earl Manners.

**Mr Earl Manners:** In 1985, the Ontario Secondary School Teachers' Federation was recognized by the Ontario Labour Relations Board as a trade union. Since then, we have organized and integrated into our union more than 9,000 educational workers. They include occasional teachers, psychologists, psychometrists, secretaries, custodians and support staff, speech pathologists, social workers, teaching assistants and other groups in public schools, in separate schools and in English and French schools throughout the province.

Our experience in organizing these new members, in negotiating first contracts and in maintaining these collective agreements for a number of years has given us a clear understanding of the strengths and the weaknesses of labour legislation here in Ontario. On behalf of our 45,000 members, we applaud the present government's attempt to improve labour relations in this province, but we believe that the present bill does not go far enough.

Let me begin by outlining some of the proposals we support. We support quick hearings with strict time limits on a complaint that an employee was illegally disciplined or discharged during an organizing drive. We support allowing picketing and organizing activity on property normally open to the public. We support expanding the Ministry of Labour's public education service to ensure everyone is aware of his or her rights and obligations. We support directing the Ontario Labour Relations Board to find that a single unit of full- and part-time employees is appropriate for representation by a union of their choice. Many part-time workers with school boards are women and they deserve full union protection.

These changes are an improvement to the existing act and will hopefully reduce the intimidation employers can use and do use during an organizing campaign. However, the federation believes that further improvements are required to protect workers during the organizing and certification process. There is a great deal of fear of retaliation among unorganized workers if they should participate in an organizing campaign and sign a union membership card. This is particularly true where there is a large immigrant population, many of whom come from countries without a tradition of trade unionism or democracy.

To that end, we recommend that employers should be obliged to post, in all workplaces, employee and employer rights and obligations under the act. This should be in the language of the workplace. We recommend that during an organizing drive, a separate posting should advise employees of their rights.

The federation generally supports those proposals which improve and expedite the certification process.

However, the federation would make the following additional suggestions:

No anti-union petitions should be permitted at any point in the certification process. These petitions are influenced by the employer. Signing or not signing a membership card should be sufficient evidence of support or non-support for joining a union.

The labour relations board should provide the trade union with the list of the employees in the employer's proposed bargaining unit. We do not believe this infringes on an individual's privacy. Right now, the employer has all the advantage with that information.

Employer-furnished lists should outline the job classification, the workplace and the permanent, part-time or casual employment status of each employee.

Access to the workplace should be guaranteed during organizing as well. Our experience with occasional teachers and educational workers located at many work sites has shown us that this is necessary.

Supervisory personnel and midlevel management should be included in the legislation. You must remember that we have experience in representing front-line managers, our principals and vice-principals, and it has been a very positive experience.

A number of bargaining units have prepared and submitted briefs to this committee which outline specific instances of difficulties experienced during the organization process, and these briefs show the need for the improvements we have identified.

In the area of first-contract negotiations, the federation believes that the provision for first-contract arbitration upon the request of either party is essential.

Our local units can clearly document how their employer forced them to go on strike for wage increases that had already been granted to non-union employees and exceeded in negotiations by other locals which were not negotiating a first contract. Their briefs have outlined the delays and limited meeting opportunities which frustrated the whole purpose of their certification. We can also show where the current legislation has been ineffective in preventing a strike. This means of achieving a first formalized relationship without disruption of the work in the workplace should be welcome to both employer and employee.

In this province, very few strikes and lockouts occur. When they do occur, the hiring of scabs has embittered the labour-management relationship and in many cases needlessly prolonged the work stoppage. The ban on the use of bargaining unit employees and the limitations on scabs are the cornerstone of this legislation and even this is a modest proposal. The provisions of the Quebec Labour Code are much more stringent than those proposed under Bill 40.

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Democracy defines a majority as 50% plus one. Many weighty social concerns are determined by simple majority. We believe that the requirement for a 60% sanction vote in the anti-scab provisions is fundamentally wrong.

The Ontario Secondary School Teachers' Federation recognizes gratefully that many of the changes proposed in Bill 40 will benefit our members who come under the Ontario Labour Relations Act. We hope this government



will accept to apply these changes to those of our members who are governed by the School Boards and Teachers Collective Negotiations Act. We speak in particular of such provisions that are already in the act; for example, the duty of fair representation and expedited arbitration and new proposals regarding just cause, continuation of benefits during a strike, prohibition of replacement workers and the prohibition of the use of bargaining unit employees. We believe that teachers deserve the same level of protection as other workers in these areas and this can be accomplished by simply amending section 2 of the current act.

In conclusion, the Ontario Secondary School Teachers' Federation welcomes this government initiative. It is excellent as far as it goes. We often hear touted the productivity of Germany and Japan. We believe their productivity derives in part from enlightened labour-management practices. In Germany, for example, workers have direct voting participation in the management of the enterprise. In Japan, the minimum wage is set at 5% of the average CEO salary and the corporation share of taxation in Japan is the same percentage share of the gross domestic product as comes from income tax.

When the corporate sector has recognized its responsibility to bear a fair share of the tax burden, when corporations begin to invest in research and development, when they begin to look on their workers and the union that represents them as essential components in decision-making, Ontario will begin to occupy its place as a model for enlightened labour-management practices. The time has come to put aside ad campaigns that portray organized labour as the bogeyman. Now is the time for more enlightened labour-management relations.

If the present government must drag some socially irresponsible corporations into the 20th century, so be it. We believe that Bill 40, as it was originally drafted, had the potential to do much good. We encourage this government not to bend to the attempt to satisfy those who would seek to destroy them. It is for that reason we end with the assurance—and we borrow it from another political party—that we, too, shall stay alive till '95.

**Mr Wood:** Thank you very much for your excellent presentation. As you are well aware, in the five weeks of hearings we're getting down to the last hour of presentations now. A lot of people have come forward supporting the bill. It seems there are positive feelings out there—investment in Ontario. I just wanted to get on the record the fact that Du Pont Canada in Kingston is investing \$55 million. They're going to create a couple of hundred construction jobs there. A paper mill in Kapuskasing is investing over \$200 million and has created about 225 jobs there. There's a lot of positive feeling out there that there is not that much fear of Bill 40 in the modest and minor amendments that have been brought forward.

My question really is in the education of labour history and the message getting out there. Women have come forward and said that before they found out about a union, there was sexual harassment on the job from the manager of a grocery store and we've had all kinds of examples of how unorganized workers are being abused, with no safety for them and no place to turn to. I'm just wondering how

much education there is and at what level. Maybe it should start at kindergarten or pre-kindergarten and work its way up—what rights are available and where they should turn to in these areas, because it seems like there's a great concern. Yet we have some of the business people saying the labour laws that were brought in by the Conservative government—and we all know they were in there for 42 years and the Liberals were in there for five—leave them alone, that the laws that were brought in 20 years ago are all right, that you don't have to change laws to reflect the changes in the workforce. I'm concerned about the education part of it there, if we can do something.

**Ms Barkley:** You're very correct. When we started our organizing drive, very few years ago it was, we were overwhelmed by the number of people who approached us. We were basically a teachers' union. We opened up to all educational workers and immediately had an enormous number of women. Ninety-five per cent of the people who approached us were women suffering from many of the problems that you have indicated, basically in wages and working conditions, and in many instances being made to feel like slave labour, really. If they had a contract, it was not one they understood. It was not often that they were even given one. They rushed to us because they happened to know us as teachers and so they also knew our record within collective bargaining.

In the whole area of education, you have a very major point. I was a history teacher, and labour history tends to be not in evidence, except for the Winnipeg General Strike. There's one board that I know, which is a Toronto board, that does actually teach labour history. As our teachers have grown more aware of labour history, and this is part of it, as we have evolved into a union—that's been an evolution—more and more of our teachers are beginning to recognize that history is not just a history of the ruling class, the kings, the queens and the prime ministers.

So that's been a part of a change, and it's a slow change. But certainly as leadership here, we try to encourage our members, our history teachers, our economics teachers—we did that with the GST, for example. We gave economics lessons on the GST for economics teachers, who could use or not use it as they chose.

I think certainly as we've evolved into a union and our consciousness has changed a bit—certainly to women workers in the workplace, sexual harassment etc, that is changing within the education sphere. More and more boards, though, should be adopting the concept of labour history as part of the history of this country, and it should be part of a history course.

**Mr Wood:** Just briefly on that, I felt there should be some mandatory education on that, but I raised the issue in questioning the chamber of commerce from Newmarket this morning as to what their feelings would be on mandatory unionization. When you come out of school, universities or whatever, in order to be a doctor, you must pay your fees; in order to be a lawyer, you must pay your fees. There's compulsory affiliation to them and if you don't pay them, you don't work.

I'm just wondering what the feeling would be, if you come out of high school or university or college, you have the right to go and join a union of your choice, and if, after a year's experience, you want to decertify, well, you take a vote in the workplace of 65% or 70% or whatever to decertify. I'm just wondering what your reaction would be on that.

**Mr Manners:** I think that's a democratic right of individuals and workers in this province, and something that should be available to them. As teachers, when they come out of teachers' college, they are automatically in one of five teacher unions in this province, depending on the school system they are working for.

That is very well supported because, as a union, we provide not only protection in terms of their contract agreements but a great deal of professional development and support services for them, especially in their early years when they're struggling in their job and learning the craft of teaching.

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**Mr Phillips:** I very much value the paper the OSSTF prepared. I commit to keeping it for some time and referring to it often.

The one thing I would just point out to you that you may not be aware of, but certainly when I'm in the staff rooms around my area I point out that the federal government this year did increase its payments to the provincial government by about 20%. I think it went up about \$1.6 billion. The province increased its payments to school boards by about 1%, which I know is of a good deal of concern to your people because you had a very solemn commitment that it was going to increase its share of spending, and it has dramatically decreased it. I just point that out because oftentimes the OSSTF members in my area are interested to learn that and weren't aware of it.

**Ms Barkley:** Can I correct just one thing, though? There is one little part there, Mr Phillips. The transfer payments have been capped. In actual fact, they've been capped.

**Mr Phillips:** I'm just going by the budget here, and it shows payments from the federal government went up 20%.

**Ms Barkley:** No, they didn't. They've been capped.

**Mr Phillips:** It's right in the budget, and you should look at that.

**Mr Huget:** The witness may be able to respond, Mr Chairman.

**The Chair:** Both of these people are doing just fine.

**Mr Phillips:** I want to get to my question. That's a point of fact and I'd be happy to share the budget with you after wards.

The background paper you provided I think was constructive, because it uses terms like "the well-heeled boots of the corporate agenda," "the virulence of the doctors' campaign" and "corporate welfare bums," I think you refer to the business community as. I think you also say here, "The unquestioning support of the business lobby propa-

ganda...is proof positive that neither of these parties could possibly have drafted fair and equitable labour laws."

I guess it's consistent with what I think we've heard from many of the labour leaders in the province, and that is, I think, a complete distrust of the business community. In fact, I think most of the labour leaders who have come to us have used terms like "spoiled brats" and "they are hysterical" I think some have said that the business community wants to start a class warfare, and your comments are not dissimilar to those.

It bothers me a lot that it looks like we have this enormous polarization in the province, with the labour leaders, like yourself, having virtually no faith in the business community, and perhaps it's happening on the other side. Perhaps the business community is also starting to begin to feel that way. So we've got this enormous polarization, with the OSSTF I think categorizing all of the business community as not—I think you used "socially irresponsible" in your remarks, sir.

I guess it's just helpful for me to understand where the OSSTF leadership is coming from on this, because I think you and I had this conversation a year ago where you said, "The business community cares about nothing but profits." I don't agree with that. I have a different view of the business community, but it would be helpful for me to just understand where the OSSTF leadership comes from in terms of its view of the business community, because I gather your comments are on the assumption that you don't have a lot of confidence in it.

**The Chair:** Ms Barkley, that was a plethora of questions and issues. You can answer all or some or none, and I'll give you more than a reasonable amount of time to do that formidable task.

**Ms Barkley:** I want to deal with it, because Mr Phillips and I have had this particular debate before and I know he has a concern and he's been close to the OSSTF over the years. I just want to say, though, on the transfer payments, Gerry, there's one thing that is true, and we can prove this, from 1986 till now, the transfer payments, which have been capped federally, have gone from 50% down to 31%. So the amount of—

**Mr Phillips:** The budgets show that from the federal government, the transfer payments are going up \$1.6 billion.

**Ms Barkley:** Maybe we could discuss—I promise to give you all of the—I don't want to take—

**Mr Hope:** He doesn't want you to get on the record. That's probably why he interrupted you.

**Mr Phillips:** No, no. I have the budget here. I'll just take out Floyd Laughren's budget.

**Ms Barkley:** In any case, Gerry, let me try to answer some of the other questions.

**Mr Phillips:** Great. Thank you.

**Ms Barkley:** You're talking about why OSSTF, and I would say the other of the teachers' federations, which have not been—and we are not part of the OFL or the CLC, which would be considered to be the mainstream of the labour movement. So we've not been part of that. This



has been an evolution that has come from our own experience, really in Ontario specifically. It's occurring in other parts of Canada, as you may well know.

One of the reasons, I guess, was the approach of business, for example, big business, towards the GST. I'm talking about big. I'm not talking about small business; you know that. I'm talking about the big corporations. I'm talking about the transnationals and the main corporations, and we have seen their lack of social responsibility. There are no corporate taxes among the vast majority of these large corporations and a fight every time somebody suggests they should pay even a minimum corporate tax to the welfare of the citizens of this province, in which they make their very large profits.

I guess when we see this and we see the recession and we see the poverty it has created and we don't see some of these big corporations taking responsibility to be good corporate citizens—we do have some, but unfortunately the international ones in particular do not look at Canada, at Ontario, as part of their responsibility, contrary to the Japanese entrepreneurs, for example, who put back money within the context of their society. Many of our transnationals don't. Their only concern, from what we have learned—this is evolution and you know that. From our own experience, we have learned to be very distrustful.

I'll give you another example that happened just this week, which got us very excited. I think you know channel 1 in the United States, where if you buy 10 minutes of a corporation's—

**Mr Manners:** Youth News Network, YNN.

**Ms Barkley:** Youth News Network, YNN, in the United States. They can go in and give the corporate message for 10 minutes, with two minutes of ads for McDonald's, Coca-Cola, whatever. They can use these captives, our students, as a captive audience for commercialism, for bringing forward corporate concepts or values. Now we have this coming here into Canada.

**Mr Phillips:** Really?

**Ms Barkley:** Yes. For example, they just got \$50,000 worth of equipment, which they can't afford normally. They signed a contract for five years. Every day, an entrepreneur brings in 10 minutes—he chooses it—eight minutes of news and two minutes of commercials. It seems to me that is an intrusion by one aspect of our society into something that should be sacred, that is, our classrooms. Our students should not be used this way. As teachers, this makes us extremely upset. This person is in Toronto right now negotiating with your board, and I must say, Mr Phillips, your board said no.

**Mr Phillips:** This is very instructive.

**Ms Barkley:** It's true.

**Mr Manners:** If I may add a point, I want to emphasize that we're prepared to work with business and labour in developing progressive educational programs over the years, but part of the distrust revolves around the fact that, although the business community in 1988 said social programs were a sacred trust, the first level of cuts the business community always talks about is social programs, including education. That is a real threat to our livelihood

and to the genuine desire on our part to continue to provide the top-quality education that we do in Ontario.

As well, we have examples of the vice-president of MacMillan Bloedel speaking to the Conference Board of Canada, suggesting that the only useful education is science, math and a little bit of English, and that social sciences and history, all those things related to labour history, are best taught on TV. That kind of narrow view of social services and the responsibilities of educational workers, whether they be teachers, secretaries or others who are providing that service, scares us immensely.

**Mrs Witmer:** Thank you very much for your presentation. I'd like to preface my remarks by saying that as a former member of your union for 12 years, when I was a secondary school teacher, as a trustee and chairperson of a school board for 10 years and as a parent now for 18, I have had the opportunity to be affiliated with many outstanding teachers in this province who are dedicated to the wellbeing of young people, and I'd like to take this opportunity to congratulate those individuals, those teachers, whose job is becoming more difficult than ever before, on the outstanding job they do for young people in this province.

**Mr Manners:** Thank you.

**Mrs Witmer:** However, having said that—

**Mr Manners:** I knew that was coming.

**Mrs Witmer:** I'm concerned, because nowhere in this document do I see a mention of students or young people.

**Ms Barkley:** That was not the purpose of this presentation to you. We deal with students on a daily basis, and curriculum, in all kinds of different ways, of course. The purpose of our presentation today was to deal with the people who work with and for young people, to make sure that in the workplace where education is, people have reasonable working conditions and compensation. In some instances, we know that has not been true. From our own experience in organizing, we've had some really horrendous situations occur.

We thought this would give us an opportunity from our experience, limited though it is, to share with you what we think should occur for people, not just teachers or educational workers or secretaries, but just in a general way, to make it much more humane.

What really came to my mind when I was listening, Elizabeth—I've been watching the presentations on TV—is the overreaction—Mr Phillips again—of part of the business community.

These kinds of reforms have been in Quebec. I taught in Quebec a long time ago and across a lot of western Europe—not England, this is true. So I've just been a little frightened by that whole response. As far as the students go, we deal with that probably 95% of our time. This is one time, though, we're trying to deal with the people who touch the students each day.

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**Mrs Witmer:** I'll tell you why I asked that question actually. The example has been given that in the event of the strike and custodians were not allowed to continue

with the performance of their duties, schools could be closed down. I guess I wondered if you had some concern about that, if replacement workers were not able to come in.

**Mr Manners:** I'd like to begin by saying that one of the premises that I think is very true in the educational sector is that educational workers' working conditions are students' learning conditions. We are the ones who negotiate smaller class sizes. We are the ones who negotiate that teaching assistants and educational assistants are in the classrooms working with special-needs students. We are the ones who negotiate that secretaries and custodians are in the school to provide a healthy, safe and welcoming environment. That is the nature of our job.

As we negotiate, we are always keeping in mind the learning environment and the working environment of our members and students. Occasionally, and I say very occasionally—we represent a number of bargaining units and almost all of them settle every year, if not all of them—there are strikes. They are usually short in duration because there is a willingness on the part of us to try and resolve our differences as quickly as possible.

Where they have been prolonged is where replacement workers, unqualified people—the board doesn't even know what their background is—have crossed the picket line, whether that's for teachers, for secretaries or for custodians. We think that presents a very present danger in our school system, so that's why we support the anti-sab legislation. We hope it would reduce the tension on the picket line, and improve cooperation and the desire to try to resolve our differences so that we can all get back to the job we like to do best.

**Mrs Witmer:** My final question is this: When I was a member of OSSTF I always assumed that it was a politically neutral association. Unfortunately, because of the tone of the presentation today, I see it as being very political. I have to tell you personally that it concerns me because I think we're all looking at doing what's best for people in this province, yet in the presentation you certainly come across as being very political. Has there been a change in the OSSTF position?

**Ms Barkley:** I would say there've been massive changes in the OSSTF in the past 10 years, but we are not, as the labour movement is, affiliated with a particular party. No, we do not pay dues to any given party. We approach each election, but we involve ourselves municipally now, provincially and federally in elections. That is a commitment that's been passed by our annual meetings, but we do not affiliate. We take very seriously the position that all parties take, for example, on the social issues; not just education. We are concerned about health as well and our whole social net. We're very concerned about all of that.

Tom Wells once said that education is political, and we've learned that lesson in spades. Our teachers recognize, no matter what kind of clause I can write, or Malcolm can write or Bev can write, we have to be able to influence the political decision-makers, and these are you people right here: the political parties. So as we approach

each election, we look and see what the position of the Liberals, the Conservatives, the NDP, and now the Reform Party—we have a good idea there—are, and we compare them and we put them out and we take our decision on what we're going to do. But we have not supported a political party per se yet to date—the defeat of some parties, mind you, but not support.

**Mr Turnbull:** I'm somewhat concerned about the fact that during these hearings we have heard from every union group, with the exception of a couple that were speaking out against this legislation, calling the business sector hysterical, yet I have to tell you—I haven't sat through all the hearings, but of the hearings that I've sat through—the presentation that I've just heard and the vilification of the business sector, broad-brush vilification of it, and some of the quotes in here have got to be the most hysterical things I have heard in the whole of these hearings.

I know that teachers in my own constituency of York Mills are rather appalled at the kind of positions you're taking, teachers who are forced to join your union and who do not agree with what you are saying.

**Ms Barkley:** My goodness, I was the president of North York and York Mills was one of my strongest supporters.

**Mr Turnbull:** I can tell you that I have teachers phoning me, saying that they do not like the positions the teachers are taking now.

**Ms Barkley:** Majority rules, as always.

**Mr Turnbull:** Have you polled your people as to this response?

**Ms Barkley:** We don't poll. We don't believe in referendum per se. We have an annual assembly every year and a provincial council every month. We have representation of one per 100 members at our annual meeting every March. The input of our members comes into that in a very democratic way. But I'd like you to turn to page 4, if you wonder why—

**Mr Turnbull:** I am on page 4.

**Ms Barkley:** If you would take a look at the bottom and, again, I think Mr Phillips would be distressed by that—

**Mr Phillips:** What's that?

**Ms Barkley:** Look at page 4, at the bottom of the cartoon, which will distress you too: "to participate in training." Here's our complaint about Canadian industry, if you take a look at that paragraph: "Canadian corporations make the lowest contribution of all 97 corporations to this." You have to read the whole thing.

**Mr Turnbull:** Are you aware that from the corporate perspective Ontario is now the most heavily taxed administration in the whole of North America? That may have something to do with it. This cartoon talks about corporate greed. I have to tell you that an awful lot of my constituents have contacted me—these are not my words—and they have said they find the teachers' unions are the most greedy that exist.

**Ms Barkley:** Let me tell you something. I had an experience here. I went to university in the United States. I



went to high school in the United States. Two of the things we pay for are health and education. We should be really concerned as we attack the social net or our taxes. You should really go down and examine some of the things that are occurring within the health system there. Over 50 million people do not have any health insurance at all. I witnessed what happened to some of those people.

**Mr Turnbull:** I agree with you but—

**Ms Barkley:** You should take a look at the public school system.

**Mr Turnbull:** —that's got nothing to do with this.

**Ms Barkley:** Yes, it does, absolutely: taxes. What you have in the United States is a situation where the number of have-nots is getting larger. You don't have an apple there any more; you have a big pear, a growing pear. Take a look at Los Angeles. In Los Angeles right now the have-nots are expanding, if you wondered why the riots occurred. I agree that there should be a reform of the whole tax system. I don't disagree with that at all. But when you say we pay too much, you should consider if you would you like to live there. I suggest you try it. I did; I came back here very quickly.

**Mr Turnbull:** Excuse me; you missed the point I made. I said Ontario corporations pay the heaviest level of taxation in the whole of North America—that includes all Canadian administrations—and demonstrably the Ontario education system is really falling down as compared with other administrations in Canada.

**Ms Barkley:** I disagree totally with you on that.

**Mr Turnbull:** Well, I disagree with you.

**Ms Barkley:** Well, we both disagree with each other then.

**Mr Turnbull:** Good.

**The Chair:** I want to thank the Ontario Secondary School Teachers' Federation for its participation in this process and its valuable contribution.

**Ms Barkley:** For the record, I have just one thing to say that has nothing to do with politics.

**The Chair:** Go right ahead.

**Ms Barkley:** It has nothing to do with politics. It's just that we have different units that have made contributions and have briefs in there. I'd would like you to know there are several briefs from all across the province.

**Mr Phillips:** We would like to hear them.

**Ms Barkley:** I was not feeding into that; I was just suggesting there are many briefs there.

**Mr Manners:** We will table them with you because they provide the evidence of our presentation today.

**The Chair:** We appreciate that. They'll be made exhibits to this proceeding and become a part of the record. I'm confident that every committee member will read them and, of course, they'll be subject to testing of one form or another at the appropriate time.

Thank you Ms Barkley, Mr Manners, Ms Wilson and Mr Buchanan for appearing here today on behalf of the Ontario Secondary School Teachers' Federation. We're grateful for your input.

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## ONTARIO MINING ASSOCIATION

**The Chair:** The next participant is the Ontario Mining Association. Have a seat, gentlemen. My apologies for the somewhat chaotic reception. It's discourteous, to say the least, but none the less, you'll live through it. We have half an hour. Make your submissions. Try to save at least the last 15 minutes for comments and exchanges. We have your submission and your executive summary. They'll be made exhibits and form part of the record. Please go ahead. Speak directly into the microphone and you'll be picked up clearly by the technicians.

**Mr John Blogg:** Thank you, Mr Chairman. It's been an interesting afternoon, hasn't it?

My name is John Blogg. I'm secretary of the board of directors and manager of industrial relations for the Ontario Mining Association. With me today is Mr Ken Hughes, who's legal counsel, human resources department of Noranda Minerals. We are pleased once again to have the opportunity to provide to the standing committee on resources development the mining industry's recommendations on how a government can improve a bill which it is trying to move through the Legislature.

In view of the time constraints and the size of our brief, I'll be dealing only with the executive summary, and Mr Hughes or I will be happy to answer any questions, if time permits, after that.

Just at the beginning, there's one typo error in the second paragraph, first page: The \$5 billion is \$7.2 billion. I'll just make that change now, so you won't think I've misread something.

The Ontario Mining Association has been the voice of Ontario's mining industry since February 18, 1920. Today we represent 41 employers in the mining industry, who employ about 90% of the workforce. Unfortunately, Ontario's mining industry, which has historically been the province's leader in the creation of wealth, both for the government and for those who work in the industry, is in a serious decline. Since 1971, our workforce has declined from 45,000; in the last three years alone the workforce declined from 29,000 to 19,000 workers, or 34%. Two victims of this decline have been the iron ore and uranium mining industries.

Although our industry has always been small in numbers relative to other industries, on a per capita basis we have created more wealth than any other industry. In 1990, that contribution was \$7.2 billion to the provincial economy. Our industry is the major creator of jobs in northern Ontario, where the majority of our members' activity exists. Mining also employs a number of people in southern Ontario, where we have a number of industrial mineral mines.

According to statistics compiled in the Ontario census, 68% of the workforce in the primary industries of northern Ontario work in the mining sector. Our industry is a major factor in the creation of jobs in the service and secondary industries of northern Ontario. In total, mining is responsible for the creation of over 200,000 jobs in northern Ontario and thousands more in southern Ontario.

The Ontario Mining Association first presented its views last August, as a member of the Employer Advisory Group on Labour Reform, to the Minister of Labour, and again during our private meetings with the minister, his deputy and staff. Our position for a balanced act has not changed, and was echoed by our members in their submissions during the minister's tour of Ontario cities regarding his Labour Relations Act discussion document. I believe this committee has heard a few of our members' presentations over the last few weeks.

Over a year ago, representatives of the Ontario Mining Association met with representatives of the Ministry of Labour, when they was in the initial phase of drafting the various recommendations. At that time, the association indicated a willingness to enter into positive dialogue on potential changes to the Labour Relations Act. To do so, we explained, the government would first need to develop a clear understanding of the consequences of any proposed legislative initiative. This was not forthcoming. However, it must be noted that the minister's Bill 40 is remarkably similar to the leaked cabinet document in content, tone and intent, and to a large degree is more onerous than those contained in his discussion paper.

If I can just digress a bit, there is another point I think I would like to make, which is not in writing. About a year ago today, I was in a meeting with the Deputy Minister of Labour and the assistant deputy minister of policy with the Employer Advisory Group on Labour Reform. On that day, both the deputy minister and assistant deputy minister of policy asked the employer community what parts of the Labour Relations Act could be amended with a minimum amount of upset for both the employer community and the labour community.

We were told at that time that it was in the very early stages of development, the government hadn't written anything, and that our comments would certainly be taken into serious consideration. On Tuesday after Labour Day the leaked document occurred. In there was a statement by the minister to the cabinet signed August 7. There was a further letter by the deputy minister in there including how to neutralize the employer resistance to the bill, dated August 12. The point I'm making is, we can sometimes understand why politicians have to be a little dishonest, but it really concerns us in the mining industry when the bureaucrats become dishonest.

Over a year ago representatives met with the Ministry of Labour. Bill 40 is remarkably similar to the cabinet document and tilts the balance decidedly in favour of labour, with total disregard for the future of jobs or investment in this province. We can only suppose that the government's failure to respond to our presentation, various independent surveys and the concerns of the business community is based on its belief that the presentations and wishes expressed were seen as a threat to the philosophical underpinnings of the government and its wish to push through its initiatives at the expense of the democratic process.

The process for consultation has been seriously flawed. Although meetings did occur, it is obvious that listening and meaningful compromise in the interest of ensuring

balance in Bill 40 did not. This arbitrary approach continues to cause the OMA and its members difficulty and has created a feeling of bad faith and mistrust of the government never before experienced. The credibility gap has been widened between business and government to dangerous proportions never before seen in this province.

We believe it is important to remind the government and the standing committee on resources development that Bill 40 is but one of a number of costly legislative initiatives forced on employers which collectively have made this province less competitive and less attractive to investors. Legislation such as that contained in the wage protection act, Pay Equity Act amendments, Employment Equity Act proposals, Workers' Compensation Act, health and safety act, Mining Act and environmental regulations have introduced additional costs which business simply cannot cope with in good times, let alone during an extended recession such as we now find ourselves in.

All parties are to blame, not just the current government, for the weight of the legislation being borne by employers. However, the impact of the various pieces of labour-related legislation introduced by the current government of the NDP are the most problematic of them all.

The investment required to start a mine is as much as \$400 million, plus 10 years of hard work and luck before it starts to make a profit. Mining is important to this government, to the people of this province and to Canada. It now contributes \$5 billion to the Ontario gross provincial product, which in two years is a reduction of \$2.2 billion. Getting the sums of money required to start a mine, given that all else is successful, hinges on the investment climate necessary for a positive employment environment in this province.

The importance of the need for a positive investment climate is obvious if mining is to remain a vital industry in Ontario. Therefore, it should come as no surprise that the Ontario Mining Association believes that a goal to promote innovation and enhance Ontario's competitive advantage is a valid one which deserves the support of Ontario business. However, it is unattainable by the approach being taken by the Minister of Labour with Bill 40. Bill 40 falls short of engendering any confidence in the government's ability to reflect reality in its concept of labour-management relations.

So while our submission and recommendations are directed at our serious concerns about Bill 40 and the consultation process used by the government, we urge you to look at its impact in conjunction with the other pieces of legislation passed and/or proposed by this and previous governments. Our submission today provides the details of and reasons for our recommendations. Here we provide you with the highlights and recommendations to which, as I said earlier, we are prepared to respond.

#### 1620

First, the purposes and the purpose clauses, recommendation 1: Given Ontario's substantial record of relative industrial harmony, it does not seem appropriate to have a purpose clause fostering trade unionism as its main objective. While we recognize the government's authority to introduce legislation to benefit special-interest groups, we



do not believe that any purpose clause should exist in legislation which is not reflective of the best interests of all society. This clause changes the role of third party in a labour dispute from an impartial arbitrator to bias adjudicator. As such, it tilts the balance between labour and management necessary to ensure fairness. Therefore, it is our recommendation that the purpose clause contained in these recommendations be amended to impart fairness and balance or be deleted.

Organizing activities, recommendation 2: The OMA strongly believes that the government must provide amendments which promote the democratic process. As such, we recommend that the organizing and certification of unions be subject to a government-supervised secret ballot.

Professionals, recommendation 3: The OMA recommends that professionals, other than those currently covered under the Labour Relations Act, not be permitted to unionize, as the potential for a conflict of interest and withdrawal of necessary services is too potentially damaging to the Ontario public.

Security guards, recommendation 4: The OMA recommends that section 12 of the current Ontario Labour Relations Act, which addresses the issue of security guards, be retained, as it provides fair and balanced legislation which prevents the potential for conflict of interest between a security guard and his or her employer in the conduct of normal job duties.

Certification process, recommendation 5: The OMA wishes to repeat recommendation 2 in its belief that a democratic government-supervised secret ballot must be incorporated in the legislation as part of the certification process.

Revocation of initial decision to join a union, recommendation 6: The OMA believes that citizens of Ontario should be entitled to the same protection, whether rendering a contractual decision with respect to their employment or purchasing a product. Therefore, we recommend that the amendments to the Labour Relations Act include a provision similar to subsection 21(1) of the Consumer Protection Act, which provides a cooling-off period of 48 hours during which time individuals can rescind their initial decision without penalty.

Financial demonstration of intent, recommendation 7: The OMA believes individuals need to have cause to seriously consider their decision to belong to a union and believe it appropriate that an initiation fee equivalent to one month's dues be paid by those signing a union card as financial demonstration of the seriousness and intent of their decision.

Petitions, recommendation 8: Again, the OMA recommends that a reasonable solution to the problems with petitions would be to require a democratic government-supervised vote by confidential ballot. Such a vote would indicate to the union, the employees, the employer and the public that the true interests of employees were being taken into consideration.

Consolidation of bargaining units, recommendation 9: The OMA is of the view and recommends that there be no consolidation of bargaining units unless both parties are

signatories to the request for such actions. This is essentially important if cooperation, consultation and participation of the workplace parties are the objectives of the amendments to the Labour Relations Act.

First-agreement arbitration, recommendation 10: The current provisions should be maintained. They contain reasonable provisions to ensure that an attempt has been made by both parties to arrive at a collective agreement through the process of collective bargaining. Those safeguards, and an objective determination as to whether certain criteria have been met are, in our view, essential.

Replacement workers, recommendation 11: The OMA suggests that if an employee may freely exercise his right to strike and withdraw his services, the only *quid pro quo* that is acceptable is to permit the employer to freely exercise his right to operate. As such, the right of employers must also be protected in this act, which includes the right to use workers not in the bargaining unit to maintain their operation.

On the issue of third-party pickets, recommendation 12: Until a review of all laws relevant to the process of picketing has been completed, it would to us be inappropriate to consider any amendments to the right to picket at this time.

On the arbitration process, our recommendation 13: The OMA believes that the process of arbitration should be left to the parties to determine and not the OLRB, unless all avenues for agreement have been exhausted.

Under the Ontario Labour Relations Board's powers, recommendation 14: The OLRB should not be given direction which is unbalanced in favour of the union and possibly contradictory of the reality of the specific situation.

On the just-cause clause, recommendation 15: The OMA, in its desire to ensure balance, recommends for probationary employees the inclusion of the following language to the just-cause clause in Bill 40:

"During the probationary period, the employer may terminate a probationary employee by way of discharge or otherwise if the employee has not, in the opinion of the employer, demonstrated such abilities and qualifications necessary for regular employment. A probationary employee may take advantage of the grievance and arbitration procedure."

That's a direct lift from a labour relations act in another province.

In summary, the Ontario Mining Association believes that the goal, "To promote innovation and enhance Ontario's competitive advantage," is a valid one which deserves the support of Ontario business but that it is unobtainable by the approach being taken by the minister in Bill 40. The bill falls short of engendering any confidence in the government's ability to reflect reality in its concept of labour-management relations. Government initiatives should be directed towards creating an environment whereby the levels of confidence in this province are increased. The thrust of the government should be to create a climate whereby business will continue to invest in Ontario and will be encouraged to risk investing. The government should also be addressing its initiatives to the

creation of an environment which would maintain and create further employment.

Unlike some arguments you've heard, our argument is not with unions but with Bill 40. If Bill 40 reflects the position of the government towards the concepts of labour relations to be practised in this province, then there will be an ongoing major need for our members to re-evaluate their investment decisions. The OMA fears that these amendments, with their lack of balance and substance, will not create any additional jobs or investment in Ontario. On the contrary, we see only lost jobs, lost investment and a lost opportunity for Ontario to regain the prosperity it once knew.

**The Chair:** Three minutes per caucus.

**Mr Offer:** Thank you for your presentation. I believe this is the final presentation of this five-week period, and it's unfortunate, because, as you know, we believe there are many other groups and associations that have matters and issues to be brought forward to this committee on this bill such as you have. I certainly do thank you for coming.

There have been some areas we have heard which you have touched upon today, and I must say I think the concerns you have brought forward are not those of a hysterical group, but rather of those who have read the bill, have looked at the bill in terms of what it means to them and have thought about what true choice means to the workers of this province.

I think that's brought forward in your position on giving workers the right to choose, democratically, free from coercion and intimidation and with full notice. I would like you to comment on that particular aspect of the presentation.

Some of the issues you've brought forward have been brought forward by many different employers' groups, not in an hysterical mode, no matter how others might wish to characterize it, because that just doesn't happen to be the case, but brought forward in a concerned, thoughtful, and from my point of view and from this side, certainly a thankful way. You've helped, as others have, in understanding the true ramifications of what this legislation means. So my question to you is on the issue of democracy, the issue of the rights of workers to be able to choose, and your thoughts and feelings on that.

1630

**Mr Blogg:** If you don't mind, could I have the chairman of our industrial relations committee, who helped draft this, answer that question.

**Mr Offer:** Sure.

**Mr Ken Hughes:** When we took a look at the draft recommendations, we were particularly chagrined to see, in our estimation, an absolute abrogation of an individual's right to decide. Our perception is that the legislation has made a *prima facie* assumption that employees can only be protected by virtue of a collective, whether they have a feeling or an affinity for that collective or not.

Unfortunately, we believe that legislative thrust is inconsistent with the reality of today's society, that individuals today desire a freedom of choice and a freedom of expression. If an individual desires to join a union, that

should be his prerogative, but the remainder of society should be assured that the individual's decision was made openly and fairly and learnedly and that there is some mechanism he can use to ratify that decision.

Unfortunately—I heard the previous submission, I heard some rather hysterical comments, I'm sure you've heard some comments from employers that fall within the same category—what you have done with this piece of legislation is, you have polarized in many ways labour and management in this province. It is something this province is going to take a long time to get over. Whatever you do in the way of legislation to bring it back into balance, to give us some sense of feeling, as employers and as employees and as unions, that the freedom of choice has been sanctified in the legislation and is protected in the legislation is vital to this province.

**The Chair:** Ms Witmer, and then Mr Turnbull, please.

**Mrs Witmer:** Thank you very much to the Ontario Mining Association for an excellent presentation. You have done what many other individuals and groups have done. You have presented us with 15 excellent recommendations for changes to Bill 40, and certainly it's my sincere hope that the government will seriously consider the amendments you have brought forward and will incorporate those into the changes it makes. I say to you, as the final presenters, thank you for your presentation.

**Mr Turnbull:** Thank you very much for a thoughtful presentation. I would like just for a moment to touch on the fact that you talk about a brief which talked about neutralizing the opposition which was prepared for the minister. I think this is scandalous. The people of Ontario have a right to expect better conduct than that. To have a government that's funded by the taxpayers, whether they voted for this party or not, to be neutralizing the people who oppose it is wrong.

I am aware that your industry has chosen Ontario on a worldwide basis, that there's a significant number of head offices of companies that may have their ownership in other countries that have chosen of their own volition to have their head offices in Ontario. Are you concerned that this has the implication that we may actually lose the confidence of that international community and in fact lose head offices as well?

**Mr Blogg:** The studies you quoted earlier this afternoon from Ernst and Young seem to indicated—and they were blind studies done—that is the case. What our industry is likely to do is re-evaluate its investment in this province. Mines don't move. They're there. They're going to be there as long as there's ore in the ground. But our members may decide to put their mining investment in other countries where they in fact operate and therefore reduce investment in this province until the climate is better. That certainly is possible.

You've heard the presentations from Inco, from Falconbridge, from Westroc Industries here in southern Ontario, all members of ours. All of them are indicating that this is a concern of theirs and that it is certainly an option open to them if the environment is not conducive to good employment and good labour relations and good investment.



**Ms Murdock:** Thank you, John, for joining us today. Actually, when I was looking at the \$7.2 billion in 1990 from the provincial economy, I was thinking back to when I was growing up in Sudbury of how many millions and billions of dollars left the north and we never saw the benefit of it actually, except for the salaries basically that they spent in the community, but from government—

As you know, my father was a miner for 37 years at Inco, and of course having grown up in Sudbury I've been experienced with Inco and Falconbridge over the years. With Inco in particular, we had the two big strikes. Basically, neither Falconbridge nor Inco have ever used replacement workers at any time, even in the old days, when mining was considered pretty rough and tough and anything went.

I know too the relationship between Inco and Falconbridge and both of their unions, the Mine, Mill and Smelter Workers and the Steelworkers, has been very good, particularly in the last 10 years or so, the conversations and the development. I was sort of hoping you would have mentioned that. I'm sure that they're two examples of your whole industry.

I know there are some problems in some areas of the country, but basically the relationships that have developed in the mining industry are good ones and I was hoping that you would have addressed yourself to how those came about. I'm sort of disappointed that you haven't, so I was wondering if you could comment on the record now.

**Mr Hughes:** I think you've had submissions from Inco and from Falconbridge. I would be more comfortable if you had addressed that issue to them. By and large, I would say that in general the relationship between the mining industry and the unions it deals with have attained a relative degree of maturity over time and over adversity.

There is a reality in the mining industry that mines do close as you run out of ore, that communities exist—

**Ms Murdock:** Or as the price of nickel goes down, yes.

**Mr Hughes:** Or as the price of uranium goes down as well, yes. I think there is a greater sensitivity as a result on both the management and union side, employer and employee side, to the sensitivities they have within an overall community.

**Ms Murdock:** Just one comment on the leaked cabinet document, because there were 17 cabinet submissions that went to cabinet before we even sat down to do the discussion paper. That was one of them, and obviously what started in submission number one was significantly different from what ended up in the discussion paper. I believe the leaked document was about 12.

**The Chair:** Do you want these people to respond to this?

**Ms Murdock:** It doesn't matter if you respond, because you've already made your comments quite clear on the record.

**The Chair:** Let them respond.

**Mr Hughes:** That's right, but I think the point is not what number of document it is; the point is we were told on a Thursday that there was nothing in writing and we found out on a Tuesday that there was in fact something in writing and a method by which to neutralize the employer community. That was the issue I was making. We were not told the truth, so any input we would have had would have been almost irrelevant. That was the point.

Can I correct one more thing? You said the money left the north and went south. I think you have to agree that Falconbridge and Inco have been primarily the drivers behind the revitalization of Sudbury, the reforestation and all the good environmental things that are going on up there right now.

**Ms Murdock:** Yes, but—

**The Chair:** I want to thank you kindly on behalf of the committee for your participation in this process. You've provided us with insight into a unique and substantial industry in the province. We appreciate your interest and the time you've taken to be here with us this afternoon. Thank you, gentlemen. Take care.

Are there any other matters for the committee? I want to thank committee members for their cooperation throughout the last five weeks, for their senses of humour, which persisted.

**Mr Turnbull:** Point of order.

**The Chair:** Go ahead.

**Mr Turnbull:** I just want to say what a fine committee chairman you've been.

**The Chair:** God bless you, Mr Turnbull.

In particular the staff, who have been particularly helpful, the research office staff, both of them—the two research officers have worked hard and done a significant and commendable job. The Hansard office has been of great assistance; the technical staff, who control the sound and video and the legislative broadcast, have performed outstandingly and the Clerk's office, Todd Decker in particular, has provided assistance without which this committee could not have functioned.

We thank once again David Augustyn, the co-op student from University of Waterloo who was with us for the first four weeks, who has now returned to school and who demonstrated talent, maturity and capacity to work, which is typical of people who live on Port Robinson Road West in Thorold in the heart of the Niagara Peninsula.

Thank you kindly. We're adjourned.

The committee adjourned at 1641.







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## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

- \*Chair / Président:** Kormos, Peter (Welland-Thorold ND)
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- Conway, Sean G. (Renfrew North/-Nord L)
- Dadamo, George (Windsor-Sandwich ND)
- Jordan, Leo (Lanark-Renfrew PC)
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- \*McGuinty, Dalton (Ottawa South/-Sud L)
- \*Murdock, Sharon (Sudbury ND)
- \*Offer, Steven (Mississauga North/-Nord L)
- \*Turnbull, David (York Mills PC)
- Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)
- \*Wood, Len (Cochrane North/-Nord ND)

### **Substitutions / Membres remplaçants:**

- \*Hayes, Pat (Essex-Kent ND) for Mr Klopp
- \*Hope, Randy R. (Chatham-Kent ND) for Mr Dadamo
- \*Phillips, Gerry (Scarborough-Agincourt L) for Mr Conway
- \*Ward, Brad (Brantford ND) for Mr Waters
- \*Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan

\*In attendance / présents

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**Clerk pro tem / Greffier par intérim:** Decker, Todd

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## Legislative Assembly of Ontario

Second session, 35th Parliament

# Official Report of Debates (Hansard)

Wednesday 30 September 1992

## Standing committee on resources development

Labour Relations and  
Employment Statute Law  
Amendment Act, 1992

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Journal des débats (Hansard)

Mercredi 30 septembre 1992

## Comité permanent du développement des ressources

Loi de 1992 modifiant des lois  
en ce qui a trait aux relations  
de travail et à l'emploi

Chair: Peter Kormos  
Clerk pro tem: Todd Decker

Président : Peter Kormos  
Greffier par intérim : Todd Decker

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 30 September 1992

The committee met at 1629 in committee room 1.

### LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992

### LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

**The Chair (Mr Peter Kormos):** It's 4:29 and the caucuses are represented. We're going to proceed, on unanimous consent, with five minutes per caucus for opening comments. Unanimous consent is given.

**Mrs Elizabeth Witmer (Waterloo North):** Before we begin, I'd really appreciate receiving a copy of the amendments from both the government and the Liberal Party. I believe that the PC Party has shared its amendments, and I'd like to see the others, please.

**Ms Sharon Murdock (Sudbury):** I'm going to be very brief and probably won't use my whole five minutes. First of all, we have tabled the amendments that have been prepared thus far by legislative counsel for the government, which will, I think, show those who take the time to read them that we have listened to the hearings and many of the comments and points that were made during the hearings over the five weeks this past summer.

From the outset we have stated that this bill is needed in terms of the changing workplace, and we need to reflect the changes that are going on into the 1990s. I think we have done that. I'm just anxious to get started, so I will defer to my honourable colleagues.

**Mr Steven Offer (Mississauga North):** Mr Chair, we're going to be embarking, as you and all members of this committee are aware, on the clause-by-clause analysis of Bill 40. I think it is clear from our hearings that there are very significant and serious concerns with the legislation. It is patently clear that this is a bill for which it is not just labour on one side and management or business on the other. There are a variety of individuals, groups and associations that have concerns with the legislation, that are not part of the so-called business community but care very deeply about their province, about its ability to attract investment and about its continued ability to create jobs in a very new era and type of competition. They have concerns that this bill, as it is presently worded, will significantly impact on any government attracting investment. There is no question that a perception arose that this bill is bad for investment. I do not believe there is anyone in this committee or anyone who took part in these hearings who would not agree with that.

The question will be, what can be done? We certainly will be bringing forward a series of amendments which I believe meet some of the concerns brought forward. We believe it is imperative that this bill be drastically changed so that the balance that has historically been found within the Labour Relations Act be reinstituted; that a positive message, that this is a province that wants and can attract investment and wants and can create jobs, be re-established; that there is a right of workers in this province to freely, without fear and intimidation, choose whether they wish or do not wish to be part of a union.

It is not a question as to whether one is in favour of non-unionization or unionization; it is a question of the basic rights of all individuals to choose freely, without fear, intimidation and coercion. Bill 40 is lacking drastically in that. We will be bringing forward amendments which will deal with that issue and others. I realize that this is now the time for the government to respond to the concerns of those many people who came before the committee voicing concerns on the legislation.

As we deal with this process, I have a concern as to whether there will be sufficient time to deal with all the amendments in all the areas that should be properly brought forward. I have concerns that this committee will not have, in the time dictated to it by the government, the opportunity to deal with the many varied issues that were brought forward. I believe that we will for the first time feel the effect of the new rules, which have in many ways limited debate and impacted upon the rights and privileges of members to speak about those issues and those items which are of concern to them, their constituents and the wellbeing of this province. We will see how this proceeds in the next coming days.

**Mrs Witmer:** We've just received the government amendments, and I certainly hope that the government has taken the opportunity to listen very carefully to what the people in this province have said during the five weeks of consultation.

I guess I have some concerns, however, that the views of all of those people who have taken the time to put together presentations are not represented, because I can tell you the only documents that I received were the presentations that were made to the committee. I know that there were several hundred other written presentations submitted to the committee which I never had access to and so I was not able to incorporate the views of those individuals and those groups, and I have to tell you I'm concerned that the time of those people and those groups has been wasted. What's the point of telling people to make a presentation, send it in and then we cannot incorporate those points of view? So I'm very concerned about that. I hope that the exercise was not a waste of our time and a waste of taxpayers' money.

I hope, as I say, that we will listen to the presentations; that we will very seriously consider incorporating the many viewpoints, the amendments and the changes that have been proposed. I was very impressed by the excellent presentations that were made this summer. Certainly there was an attempt by people throughout this province to compromise on the amendments, and I hope that the government is listening to the voices of those groups and those individuals.

I'm disappointed that the government has said it's heard nothing new. I personally felt that there was a tremendous amount of new information, and I did feel that many of the groups showed a true willingness, too, to cooperate and to compromise, and I hope that will be taken and reflected in the government amendments.

I'm still concerned that Bill 40 doesn't improve the workplace. It's not going to improve cooperation and harmony unless there are some changes made. I hope that our amendments have been put forward in an attempt to represent the views of all Ontarians. We've taken a look at the presentations by the professional groups, the electrical groups, the municipalities, the school boards, business, children's aid societies and individuals. We have tried to reflect the views of all Ontarians in this province, and I hope that the government will give very serious consideration to the amendments that we are proposing.

Today I'm going to be tabling 49 amendments for sections 1 to 19 and also my private member's bill, because one of the issues that I have been most concerned about—and I raised this issue when Mr Mackenzie first tabled Bill 40 in November 1991—is the need for a secret ballot vote. I'm very pleased that recently the Liberals have jumped on board that bandwagon and have been publicly stating their support for that private member's bill that I put forward, because I am very concerned about the infringement on individual rights that this Bill 40 creates. I believe that all individuals should have the right to a secret ballot vote for certification and ratification and going out on strike, and I hope that the government will certainly incorporate my private member's bill in the amendments to Bill 40.

I hope that as a result of our discussions we will restore the balance in the legislation. It's a very delicate balance that needs to be maintained, and I hope that as a result of our discussions here we can create in this province once again a climate of economic certainty. Every day, more people are losing jobs, and every day we are hearing stories such as the one that has just been released by Forbes magazine about what a terrible place Ontario is in which to invest.

I hope the government will listen. I hope the government will respond to the views of the people in the province of Ontario, and I hope that as a result of the amendments we pass over the next eight days we can promote job creation and we can promote investment security and that people in this province will once again have the opportunity of looking forward to having a job.

**The Chair:** Thank you. Okay, we're going to proceed with clause-by-clause consideration. In view of the terms of reference that were passed by the Legislature, there's a clear suggestion that votes on those respective clauses be

deferred until the end of the eight days, so I suspect that there's unanimous consent in that regard. Thank you.

I also want to indicate that as Chair I appreciate the indulgence of the committee. You might know that Bill 164 is being presented for second reading. That's the New Democrat no-fault auto insurance plan. I appreciate the committee's indulgence in stepping out on occasion as that bill is being sneaked through the Legislature. I would like the opportunity, in view of the fact that I appear to retain the position of NDP auto insurance critic, to return to the House to deal with that. In any event, we'll deal firstly with section 1. There'll be a Vice-Chair, of course, to pick up where I left off.

**Mrs Witmer:** I have several requests to make.

**The Chair:** Go ahead.

**Mrs Witmer:** First of all, I would like a list of all of the presenters who appeared before the committee. I presently do not have that list. I also would like the complete list of all the groups and individuals that did submit written submissions. As I say, we've not had an opportunity to do justice to any of those submissions, and I just find it totally appalling that we would encourage people to submit that. Finally, I understand that the government tabled on Monday, in the House, the public opinion survey for the labour relations reform act. I would certainly appreciate receiving a copy of that survey.

**The Chair:** Are there any amendments to section 1 of the bill? I should indicate that there is an amendment by the PC caucus creating section 1.1, Ms Witmer. I'd ask that it be held down in view of what I'm advised will be a corresponding amendment by the government, and the two may result in interplay. It would be premature to deal with yours without your having an opportunity to deal with that one.

**Mr Offer:** Mr Chair, as we embark on this process I'd like to know if I've got all of the government amendments to the bill, if there may in fact be amendments to the bill dealing with some of the opening sections that we are dealing with. If so, could you please indicate what you, as government, are suggesting for change before we discuss our positions?

**Ms Murdock:** The government motions that have been submitted to you are as far as we have gone with the legislative counsel. There are still a few that will be coming in, I believe, from section 73.2, and on the employment standards section as well, the end of Bill 40.

In terms of the beginning of the bill, we're having some discussion with legislative counsel and the clerk in regard to the preamble deletion. Depending on whether or not we can get unanimous consent to allow—

**The Chair:** That's different, Ms Murdock.

**Ms Murdock:** That's different? That's different than what has been asked?

**The Chair:** Yes.

**Ms Murdock:** Then I'll wait until that section comes up.

**The Chair:** Thank you. Any other matters? Thank you. Are there any amendments to section 1?

**Mrs Witmer:** So you're standing that down?



**The Chair:** Yes ma'am, please.

**Mrs Witmer:** Okay.

**Ms Murdock:** What are you standing down, Mr Chair?

**The Chair:** I'm standing down the PC amendment creating section 1.1.

**Ms Murdock:** Could I have a copy of the PC amendments?

**Mrs Witmer:** They were handed out, Sharon.

**The Chair:** Ms Murdock, do you want to speak to section 1?

**Ms Murdock:** We have no changes to that section. I think the advisory service that would be established speaks for itself.

**The Chair:** Dealing with section 1 of the bill, any discussion?

**Mr Offer:** I have a question with respect to the advisory service, and it is one which I brought forward when we were dealing with the legislation, especially in regard to the appointment of Mr Vic Pathe. I would like to obtain from the ministry officials or the parliamentary assistant what the essential difference is between this advisory service as contained in Bill 40 and this new service to which Mr Pathe has been appointed deputy minister.

1640

**Ms Murdock:** If I might, Mr Chair, have Tony Dean speak to it, because they are separate.

**The Chair:** Go ahead, sir.

**Mr Tony Dean:** Mr Pathe was recently appointed Deputy Minister of Labour for the renamed labour-management services division, which was formerly the industrial relations division. There is no connection between that division, which has existed for many years, and the proposed service identified in part 1.

**Mrs Witmer:** I'd like know why I would be standing down section 1 of the act, the preamble.

**The Chair:** Okay, you don't have to.

**Mrs Witmer:** No, I would like to—

**The Chair:** Okay, we'll deal with the Progressive Conservative motion, an amendment to section 1.1 of the bill. Go ahead, and of course with unanimous consent, no need to read these, everybody having the same amendments.

You're moving that the bill be amended by adding the following section at the beginning of part II: 1.1. The preamble to the Labour Relations Act is repealed and the following substituted:

"Preamble

"It is in the interest of the province of Ontario to further harmonious relations and industrial peace between employers and employees by,

"(a) ensuring that workers can freely exercise the right to choose whether to organize and be represented by a trade union of their choice and to participate in the lawful activities of the trade union,

"(b) encouraging the process of cooperative collective bargaining, and

"(c) providing effective methods of joint problem-solving and dispute resolution."

You're moving that, Ms Witmer?

**Mrs Witmer:** Yes.

**The Chair:** Do you want to speak to that, please?

**Mrs Witmer:** Yes. Actually this was one of the viewpoints that was put forward by the presenters this past summer. As you know, Bill 40 would, for the first time, enshrine an extensive new and very much untested purpose clause within the legislation itself, and by including it in the legislation, all other aspects of the legislation are affected by the purpose clause. While the existing preamble has been referred to for guidance by the Ontario Labour Relations Board for a number of years, its impact has been tempered by its position. It has expressed intent, but has not been treated as part of the law. If we include the purpose clause in the body of the legislation, that is virtually without precedent, and we believe that making it a substantive part of the legislation, subject to OLRB interpretation and perhaps judicial interpretation, certainly represents an unwarranted infringement on the collective bargaining process. We will now see if that occurs.

The role of the board should be as a neutral referee which interprets a single set of evenhanded rules assuring that the processes of certification and collective bargaining are administered fairly. That's been the role in the past, and we believe very strongly that should be the role in the future. The board should not be viewed as the proactive arm of government going beyond the process into the content and substance of both certification and bargaining to further the interests of organized labour. Unfortunately, that is what Bill 40 envisions. This then moves the purpose clause into the preamble to the legislation as it exists in the current legislation.

**The Chair:** Further discussion?

**Mr Offer:** I'm going to be moving a further amendment to this, but I think that it's important to speak to Ms Witmer's motion firstly.

**The Chair:** Before you move an amendment to her amendment?

**Mr Offer:** Yes, if that's fine.

**The Chair:** God bless.

**Mr Offer:** We're just getting the hang of this, Mr Chair. You'll have to be patient until we get into the proper flow of things. However, I think that it brings up an important principle. It's a principle which we heard time and time out when we went through the hearings, and that was that the purpose clause, as dictated by the bill, is one which in many ways rebalances in an unfair way the Labour Relations Act. What we have to do is bring forward a reinstitution of the balance in labour relations. It is without question an important area, because it is these words on this piece of paper which will guide the labour relations board in a very real sense for the many questions that come before it.

I believe that the purpose clause as provided in Bill 40 institutes an imbalance to the legislation, that there must be a rebalancing and that this can only take place in a preambular position. A purpose clause and its position in a legislation are much different than words in a preamble. They

are much different, not only in the words but in the way they dictate to the board, and it is important for us to acknowledge that at the outset of these hearings so that we can start with what hopefully will be a balanced set of principles to guide the board in its deliberations.

**The Chair:** Are you making an amendment to this amendment?

**Mr Offer:** Yes.

**The Chair:** Do it slowly so the clerk can write it down, please.

**Mr Offer:** I've got copies of that, but that's fine. I'm moving that the bill be amended—

**The Chair:** Not the bill. The amendment's on the floor.

**Mr Offer:** The preamble.

**The Chair:** No, there's an amendment.

**Mr Offer:** I understand that the amendment is to the preamble, correct?

**The Chair:** Yes, sir.

**Mr Offer:** Is that not correct?

**The Chair:** There's a motion on the floor right now moving an amendment to the bill. You can move an amendment to this amendment or you can wait until this amendment's resolved.

**Ms Murdock:** I'm having some difficulty, mainly because the preamble, as far as we've been told, has not been opened and therefore is out of order for any motion.

**The Chair:** Do you really want to push that?

**Ms Murdock:** I don't know. I'm wondering why we were told that and now we're working on this amendment.

**The Chair:** I'm satisfied this motion's in order.

**Ms Murdock:** Okay.

**The Chair:** Now, is there any further debate on this motion?

**Mr Ted Arnott (Wellington):** I'd just like to speak in favour of it very, very briefly. I think one of the main problems in our economy today is lack of certainty. This amendment would provide some certainty in that decisions of the Ontario Labour Relations Board with respect to this Bill 40, the new Labour Relations Act, would likely be more certain if this amendment were passed, and I would encourage the government members to support it.

**Ms Murdock:** Having said that, and I'll quote Ms Witmer when she said that as a preamble this would be intent, it has in the past and historically been intent but not law, yet what I'm reading under this is that the existing preamble would be repealed and a new preamble would be set, and I would not support that.

**The Chair:** Any further debate? All in favour—

**Mr Offer:** Wait just a moment. I just want to be very clear as we proceed. It is my understanding—and maybe you can help me out on this—that the motion brought forward by Ms Witmer is to the preamble of the act. It does, I believe, do two things. I'd just like to get an understanding. It does two things. The first is that it repeals the existing preamble of the Labour Relations Act, and secondly, it

inserts in its stead the words of the Progressive Conservative motion as a preamble to the legislation.

**The Chair:** Yes, sir.

**Mr Offer:** That is my understanding.

**The Chair:** Yes, that's exactly what it does.

1650

**Mrs Witmer:** Our intention here is to place the purpose clause in the preamble to the legislation, and remove the purpose clause and have only the preamble as we presently have. That's my intent.

**The Chair:** Any further debate? All those in favour, please indicate. Opposed? The motion's defeated.

Go ahead, Mr Offer.

**Mr Offer:** I think there is a motion in much the same form which is being circulated now.

I move that the bill be amended by adding the following section at the beginning of part II:

"1.1 The preamble to the Labour Relations Act is repealed and the following substituted:

"Preamble

"It is in the public interest of the province of Ontario to further harmonious relations and industrial peace between employers and employees by ensuring that workers can freely exercise the right to choose whether to organize and be represented by a trade union of their choice and to participate in the lawful activities of the trade union."

I don't think we should underestimate the importance of what we heard during the hearings. People came before us and spoke about what a purpose clause means in the day-to-day deliberations of the board.

Now, I am not yet directing my mind to the words of whatever that purpose clause is but to the fact that there is one and that it does dictate in a fundamental way how a board is going to resolve matters that come before it. We heard that the wording in a preamble sets the stage. It sends out a message, not a perception but in a real way a statement as to what labour relations are and should be and hope to be in the province of Ontario.

The motion I have brought forward to be inserted in the preambular portion of the legislation states, "It is in the public interest of the province of Ontario"—meaning the people of the province—"to further harmonious relations and industrial peace." We can't disagree with that.

It states further that workers should be able to "exercise the right to choose whether to organize and be represented by a trade union of their choice." We can't reject that. I think that we need, without any question, this type of wording, this type of statement which sets the stage that workers do have the right to freely exercise their choice to be organized in the trade union they so choose. How can we, how can anyone speak against those words?

Thirdly, it talks about participating "in the lawful activities of the trade union." That says an awful lot. It says that there are activities which trade unions carry on and that the province understands and supports workers in a participatory role in the lawful activities of trade unions.

These are three very important principles—first, public interest to further harmonious relations; second, workers having the right to choose; third, workers to be part, if they



wish, of the activities of a trade union in a lawful way—which I believe are essential in sending out not a perception but a statement that this is a province which embraces these, that this is a province which understands and recognizes that workers should, if they want, be part of it.

To vote against this is to say, "We are not in favour of these three principles." That's what we say. So I make these statements, but I break them down in terms of their essential components because there are three in nature, and they will be a guiding tool in how the act is defined, in how people look upon this province, and I would ask for members' support for this amendment.

**The Chair:** Does anyone else want to speak to Mr Offer's motion? Go ahead, Ms Witmer.

**Mrs Witmer:** I will certainly support the motion. I certainly do believe that we need to encourage harmonious relations within the province. Unfortunately, at the present time, the legislation as it has been introduced and the consultation process we've gone through has had a very disastrous effect on that harmonious relationship and we need to do whatever we can to restore that. We need industrial peace and it's absolutely essential that employers and employees work together in a very cooperative manner, and anything we can do to make sure that happens we need to support.

Workers do have the right to join or not join a union and we need to ensure that employees can freely make that choice. In order to make that choice, I believe they need to be given all the essential information as to what is involved in joining a union and what is the impact, and also what it means if they're not unionized.

I do believe they're entitled to information and they're entitled to the right to be represented by a trade union, if that is their choice, and to participate in the activities of that trade union. I believe, however, that before they make that choice, they need to have all the information and there needs to be a secret ballot vote. If that's the intent of this preamble, I certainly would support that.

**The Chair:** No further debate? All those in favour please indicate. Opposed? Mr Offer's motion is defeated.

No further amendments to section 1 of the bill? Any discussion regarding section 1 of the bill? Go ahead, sir.

**Mr Offer:** Just before we talk about section 1, and I'm going to ask for your guidance in this matter, I have sort of two section 1s. One is the advisory service and then we sort of went into the preamble. I'm wondering if we're actually into two areas of the bill.

**The Chair:** We are dealing with section 1. The bill only deals with section 1, which is advisory service.

**Mr Offer:** That was exactly my question, because as it only dealt with the advisory service, and we spoke to that, Ms Witmer moved a motion which did not deal with that aspect; it dealt with the preamble to the bill. I'm still hung up on the fact that we've dealt with the preamble to the bill and Ms Witmer's motion—in fact my motion—did not deal with the advisory service aspect, but rather one before.

**The Chair:** Understanding that both of them were defeated, now we're ready to deal with section 1 of the bill.

**Interjection:** All those in favour?

**The Chair:** We're deferring votes on these sections in the bill until the end of these eight days, on unanimous consent. Thank you.

We've got a part II, section 2 of the bill. Ms Witmer has a motion. She moves that subsection 2(1) of the bill be struck out. Is that correct? Please speak to that.

1700

**Mrs Witmer:** The intent of this amendment is to maintain the \$1 membership requirement. We believe that this is, at the present time, the only requirement which may cause an individual to seriously consider his or her action if the opportunity is not presented for an information session and the secret ballot vote. Although that \$1 is certainly a nominal fee, it does draw the attention of the employee to the seriousness of the decision that he is about to make as to whether or not to join the union. The elimination of the requirement gains even greater importance when you set it against the proposal from the government to eliminate petitions. That certainly concerns me as well.

The workers' rights of self-determination are being infringed upon through the certification process because Bill 40 takes away the right to revoke your membership once the union has applied to the labour board. Bill 40 takes away the right to oppose by way of a petition and it takes away the small safeguard of that \$1 minimum payment.

These proposals collectively remove any remaining safeguards to ensure that the true wishes of employees will be known, and thus we feel it is absolutely essential that the \$1 membership requirement, although very nominal, be maintained because it does draw the employee's attention to the fact that this is a serious decision that he or she is making, and we then would propose that amendment.

**Mr Offer:** I must say that I certainly do understand the purpose for this amendment. I think it is clear that in the past there has been the fact that when one asks for a dollar, it immediately results in a reaction—"What is this for? Why do I have to pay this dollar?"—which immediately provides information. The reason for that payment is brought forward. It has, I think, in the past acted as a safeguard, if you will, to make certain that employees in organizing drives are informed as to what they are signing. I don't think there's anything the matter with that, to be very frank with you.

The government is attempting in the bill to delete the \$1 membership fee, which will of course result, of necessity, in workers being able to sign and not having to pay anything, and so we lose a safeguard for workers in this province.

This can be, without question, dealt with if I could hear from the government members at this time whether they will be proposing—Mr Chair, I say this now because it will have an effect on whether I support this amendment or not. I am mainly concerned that workers are informed as to what they are doing and why. I am mainly concerned that they are given this information in a forum which is free from fear, intimidation and coercion from whatever source. We heard during our committee hearings that there are examples of this type of activity taking place on the part of employers, and in fairness there were those who

said that the union organizers are also not free from this type of criticism. We can debate whether this is or is not the fact. But the question still remains that we must, in legislation, make certain that workers, either of their own volition or through mandatory terms in legislation, are given notice of their rights.

I understand the reason for the repeal of the \$1. It is my understanding that the real reason for deleting the \$1 is because it has been used as an argument in a certification drive, an argument which I think we've heard referred to as non-payment of a card. This has, in cases, thwarted organizing drives. So the question is clear that we are not doing this, and this amendment by the government is not there for any enhancement of workers' rights, it is there because it has been used in an argument against certification, against organizers.

I think we have to be clear, direct and honest about what this amendment is here for, so I go back to my concern about the worker and his or her rights being made known to them before they sign a card. We've heard from people coming before the committee who say they sign a card and they are told, "You sign this and you get a vote." We know, though we can't substantiate this—just as we can't substantiate all of the examples of employer activities during organizing drives—that this really isn't what the signing of a card is. It doesn't do that of necessity, because there is this thing that still exists in the legislation called automatic certification.

My question to the parliamentary assistant, if this is possible and permissible, is: Will the government be bringing forward amendments to this bill which mandate that workers are given notice of their rights under the legislation?

**Ms Murdock:** We attempted something along that line during the consultation in the discussion paper, and it was pretty clear after the consultations that they didn't want information posted. The posting of information particularly was not appreciated, predominantly by employers, although also by some of the union groups. What we decided to do, rather than mandate it legislatively, was go with an expansion of the ministry's public information and education system with a telephone information service provided.

**The Chair:** Your answer is no.

**Ms Murdock:** We are doing it, but not mandating it.

**Mr Offer:** It then puts me on the horns of a dilemma, because I believe it is absolutely imperative that workers be given notice. You might have some concerns as to how that notice is given, but I think it is absolutely imperative that the workers of this province, in an organizing drive, especially because petitions have been eliminated in further sections, be given notice of their rights. It is not enough to say to a worker, after the application for certification is filed, "You had the right to change your mind." That's the way Bill 40 would impact. That is not good enough for the workers of this province.

The parliamentary assistant looks quizzically at me, but it is clear that when you eliminate post-application petitions or changes of mind and do not do that to pre-application changes of mind, which the government has

not done unless there is something I have not heard of, if you do not tell a worker that he or she has the right to change his or her mind, then in fact one cannot expect the worker to exercise that right. What mechanism is in place to inform workers of this province that when they sign a union card they have the right to change their minds until the organizers file the application? I would like to ask the parliamentary assistant where that information can and will be given to the workers of this province, because they will certainly ask that question if they're paying a dollar.

1710

**The Chair:** Is your answer the same as the previous response?

**Ms Murdock:** Well, no. I don't see how paying a dollar, in truth, will respond to the concerns that Mr Offer has stated. In fact, if the Ministry of Labour has an information service that is available, that information service number, hotline, whatever, can be posted in a workplace all year round and the employees at that point can not only call down for information about union organizing but can also call down for health and safety matters or any other pieces of information. In truth, I do not see how a \$1 union fee would specifically respond to the concerns of Mr Offer, and I won't be supporting this.

**Mr Offer:** But what is the trigger that would alert a worker in this province to that number during an organizing drive? What would trigger a worker in this province in an organizing drive after he has—or has not, by the way—signed a union card, to call that number to say, "Boy, I need to know my rights and I just happen to have this number"? Where is it in the legislation that gives that notice, forgetting about how it doesn't even tell the worker when his or her rights are, it doesn't even alert them to the fact that there's such a number? Where is it?

**Ms Murdock:** There is no trigger in the legislation to do that. Right now, our ministry gets all kinds of calls on this.

**Mr Offer:** I don't know that we can allow workers to be left out like that. I don't believe we can do that. I think that's unfair to workers, to expect that they will know all their rights under the Labour Relations Act, the Occupational Health and Safety Act and all the other acts, that they will know of this number, that they can call this number, that there is information they can be given, that it will be given in a timely fashion and that they can then act accordingly. I have a concern about that.

**The Vice-Chair (Mr Bob Huget):** Further discussion on Ms Witmer's motion?

**Mr Offer:** I think the government members are going to see the light as we deal with this. I would like this section to be stood down.

Interjections.

**Mr Offer:** I just want Ms Witmer to listen to this part. I just have no doubt, after hearing the very important presentations made to the committee, that as we deal with this bill government members will come to realize, hopefully in the next eight legislative days, that they are not informing workers of their rights and there's something wrong with that. I would ask that this section—because I see it as tying



in, not adequately so, but having a tie-in to doing something at least to make workers ask what their rights are—be stood down, that this amendment and the section with which we are dealing be stood down, because we're going to be dealing in a very real way with the whole question of certification drives, organizing drives and notice and what should be given.

I would like, Mr Chair, to deal with this amendment, which I think is important, after I see whether the government members are in favour of or opposed to informing workers of their rights. So far they've said no, but I—call me an optimist—just think that as we deal with this bill they will see the glaring holes within it. So I would ask that this very important motion be stood down until we deal with the whole question of workers' rights and notice of information to workers.

**Ms Murdock:** I'm not in agreement with standing this down, mostly because I have a feeling that if we're going to use that rationale for standing down each and every thing, we'll be standing down a tremendous number over the period of the next eight days. So I would just not agree to that, but then it's not my motion, so I'll leave it to Ms Witmer.

**The Vice-Chair:** Further discussion? We're dealing with Ms Witmer's amendment.

**Mr Offer:** No, we're not.

**The Vice-Chair:** Yes, we are.

**Mr Offer:** With the greatest respect, Mr Chair, I think we're dealing with the request that I made. I don't think that we can deal with Ms Murdock's amendment—

**Ms Witmer:** Mrs Witmer's.

**The Vice-Chair:** Mrs Witmer's.

**Mr Randy R. Hope (Chatham-Kent):** Maybe we'll see the light.

**Mr Pat Hayes (Essex-Kent):** Everybody introduce themselves.

**The Vice-Chair:** It's getting to that point where we have to go round the room.

**Mr Offer:** I've explained why I have a difficulty, why I've made my request, because I think that it does tie in in some way with workers' right to know, and we will find out later on from the government members whether they—I know that they were present—were listening. Of the need to allow workers in this province to know their rights, especially during an organizing drive, this amendment is important. It ties into that, but it may be impacted if the government members want to give—when they have the opportunity, in legislative form—the enshrinement of the right of a worker to know his or her rights in this province.

We know that the Minister of Labour is not providing an amendment. We know the Minister of Labour has already said no to that, but we also know the Minister of Labour wasn't at any of the hearings; government members were.

**The Vice-Chair:** Thank you, Mr Offer. Is it the pleasure of the committee that the motion be deferred? It's defeated.

We're dealing with Ms Witmer's motion. All those in favour of subsection (2) of the motion, please indicate. Opposed? Motion's defeated.

Ms Witmer, do you have a further motion?

**Mrs Witmer:** Yes, I do.

I move that subsection 2(1) of the bill be struck out and the following substituted:

"2(1) The definition of "member" in subsection 1(1) of the Labour Relations Act is repealed and the following substituted:

"'Member,' when used with reference to a trade union, includes a person who,

"(a) has applied for membership in a trade union, and

"(b) has paid the trade union on the member's own behalf an amount at least equal to one month's dues of the trade union."

1720

The intent of this amendment to increase the membership fee from \$1 to the equivalent of one month's dues is to ensure that all employees are fully informed as to what is involved in joining a union. The reason for the one month's dues is based on the fact that prospective union members are going to have to pay that type of monthly dues when or if the certification campaign is successful. This requirement, then, to pay one month's dues when signing a union card will ensure that the individual joining the union clearly knows and considers the financial obligation that he or she is undertaking and also is aware of the other implications, such as the history of the union and what's involved if you go on strike.

I am not convinced that at the present time all individuals really are aware of what it means to join a union. We know there is coercion, that there is harassment on both sides, whether from the union organizers or from the employers. We need to ensure that people have access to the information. Although the government talks about this information service being available, I can tell you that most people are not aware of all the services the government provides for them. If someone is put into a position where he has to pay one month's dues, believe me, he will give very serious consideration to what is involved and the financial obligation he is undertaking.

Individuals need to consider seriously their decision to belong to a union, and thus I believe this initiation fee, equivalent to one month's dues, should be paid by all those people signing a union card as a demonstration of the fact that they have thought it over carefully and that as a result of thinking it over carefully and having been fully informed they now are announcing their intention.

This paying the membership fee which would be equivalent to one month's dues becomes even more important when you take into consideration the fact that the government is proposing to eliminate the petition safeguard. So people do need to have an opportunity prior to joining a union to really carefully consider the implications, because they will no longer have the opportunity after the union is certified. Thus, we support very strongly the increase of the membership fee to the equivalent of one month's dues to ensure that the individual joining the

union does clearly know and understand all the implications of what is involved in joining a union.

**The Chair:** All those in favour please indicate.

**Mr Offer:** Wait.

**The Chair:** Come on over here, Mr Offer, at your place, and speak to it.

**Mr Offer:** You spoke so eloquently earlier on about the coffee in the Legislature, I thought I'd take advantage of it, and the first time I take advantage of it, bang.

**The Chair:** Go ahead, Mr Offer.

**Mr Offer:** I'd like to get a point of information. Ms Witmer has moved this motion which speaks to one month's dues. Could we get some idea as to what that might mean in dollars and cents?

**The Chair:** Parliamentary assistant.

**Ms Murdock:** It would be different for different locals. I can't speak for the unions.

**Mr Offer:** My question was actually to Ms Witmer.

**The Chair:** Come on up here, Ms Witmer. Would you like to answer Mr Offer's question?

**Mr Offer:** I had a question of—

**The Chair:** She heard the question.

**Mr Offer:** —information, which was whether there was a dollar figure that was in mind when this amendment was drafted.

**Mrs Witmer:** There was no specific dollar figure in mind; however, I guess it would depend on the organization involved.

**Mr Offer:** Thank you very much. Everyone heard what my comments were on the previous matter. I must say, I have a bit of a concern in this area, and I'll tell you why.

My motion earlier dealt with the preamble, the third part of that, talking about workers able to exercise the right to choose. I'm aware that the government members voted that principle down, but it's an important principle, and even though the government members voted it down it's still a principle which I hold on to. I think workers should have the right to choose, to be able to decide whether they wish or wish not to be part of a union, to be informed, to be able to do so free from intimidation or coercion.

I have a concern that this motion—though I understand why it's there; it's really there as a safeguard that workers will demand to know their rights in an organizing drive, and I am in favour of that—may result in a monetary hurdle which is not really embracing the principle of allowing workers to choose. I have a concern, especially as we have not been able to receive with any degree of certainty what that monetary amount may be. It may be \$5 on a monthly basis, it may be \$100 on a monthly basis. I think that's an awful lot of money. We know it's going to be more than \$1, we just don't know how much more.

I guess I am concerned that possibly a worker—I'm thinking about this—may want to join a union but the membership fee is one which he or she cannot see as being affordable. I don't know that that should be a hurdle for a worker joining a union. I'm in favour of them being

informed of their rights, but I don't want the hurdle to be so great that they can't freely choose.

To carry this one step further, what if the direction of the amendment is successful? What if the workers are, as a result of this amendment, given their rights, and as a result of knowing their rights still decide to choose to join? Fine. But then what if the monetary amount is one which they cannot handle?

I think we all recognize the state of our economy in this day and age, and I don't know that that really embraces the principle of choice, so I must say that I would have some concerns with this section.

I asked in the earlier amendment that a section of this kind, although without the dollar amount, be set aside until we deal in a more comprehensive way with notice to workers. I recognize that that was not given; however, I will make that request once more to ask that this motion be—forgive me, I'm not familiar with the actual parliamentary jargon—set aside to be dealt with at a later point in terms of voting.

**The Chair:** It's a motion to defer.

**Mr Offer:** That's the word.

1730

**The Chair:** All in favour, please indicate. Opposed? Motion to defer is defeated. Go ahead, Mr Offer.

**Mr Offer:** The question of deferral on very important issues which do have an impact on other sections is very troubling to me. I have concerns about this section, as I've indicated. I don't know that it is in the best interests of the workers of this province.

**Mrs Witmer:** If it's any consolation to Mr Offer, we share his concerns, and our amendments later on in section 8 address the concerns regarding the intent to certify, so we are quite comfortable going ahead with this amendment at the present time.

I'd also like to indicate that if we are really concerned about the need for cooperation and harmony in the province, I hope the government will take into very serious consideration the need to have a membership fee here, which would clearly indicate that the member contemplating unionization has given it careful consideration and has been fully informed of his or her rights and obligations. Because as I see it at the present time, Bill 40, although it proposes to improve cooperation and harmony, all it's really doing is making it easier to facilitate unionization, and I don't see much of an attempt for cooperation and harmony. Certainly, if we gave everybody the opportunity to know all the facts, that, in my opinion, would certainly go a long way to addressing the objective of cooperation and harmony in the workplace.

**The Chair:** All in favour of Ms Witmer's motion, please indicate. Opposed? The motion is defeated.

There are no other amendments that appear to subsection 2(1). Any further discussion of subsection 2(1)? Thank you.

We move now to subsection 2(2). Any amendments to subsection 2(2)? No amendments. Any discussion of subsection 2(2)?



Subsection 2(3) of the bill? No amendments? Any discussion about subsection 2(3) of the bill? Thank you.

We're moving now to section 3 of the bill. Any amendments to section 3? There are no amendments to section 3. Any discussion regarding section 3?

**Mr Offer:** Mr Chair, a point of clarification: I understand section 3—just to make certain that I'm on the right track—deals with the heading "Application and Purposes of the Act." Is that correct?

**Ms Murdock:** Yes, that's correct.

**Mr Offer:** Again, this is probably for some others to help, but though it sounds quite innocuous, "Application and Purposes of the Act," that introduces us to the purposes of the act.

**Ms Murdock:** Ah, I see what you're saying.

**Mr Offer:** So though I do not have a motion to that, I do have discussion around that section. I think we have to be very careful here, because this seemingly innocuous section is indeed nothing less than the key that opens the door to the imbalance of the act. It hasn't got the words to it, but it does, for the first time, indicate that there will be, within the legislation, a purpose. I think that's very important.

I am opposed to the purpose being found within the legislation. I know we have already dealt with the preamble, but I am very much concerned that we are opening the door, the intent of which we cannot imagine, by encompassing the purpose, certainly what is now in Bill 40, to be blanketed over all actions that take place throughout the act, especially the actions of the board.

It is these small sections that come back to haunt in a very real way. It is these small sections which say and send out the message that there is going to be not a preamble, but a purpose clause. I believe there is a significant difference in the impact a purpose clause will have over a preamble. The heading "Application and Purposes" opens the door for the purpose clause.

I believe that though a preamble is important, it is important in terms of setting the stage for some guiding principles. In my amendment, which was defeated by the government—though I can't imagine why, because all it talked about was harmonious relations, being participants in the lawful activities of unions and giving workers the right to choose; I do not know why the government finds that so difficult to accept. We have to recognize that a purpose clause will be a mandatory dictation to the Ontario Labour Relations Board in many areas and questions that are before the board. It will result in decisions which may in a strange sense fly in the face of the preamble of the legislation.

I wonder if we have recognized what happens when the argument is made that the purpose within the legislation is something different than the preamble of the legislation. What horrors are unleashed for workers in this province by not recognizing this at this stage when we had this opportunity? I'm voting against this section, Mr Chair.

**Mrs Witmer:** I'm very concerned about the section that we are about to discuss, because for the first time, instead of simply encouraging the process of collective bargaining and letting the party negotiate the results, we

now have an act which is going to specify the goals that are to be accomplished by collective bargaining.

I am extremely concerned that the government did not listen. There were numerous excellent presentations made throughout the summer regarding the purpose clause, regarding the fact that this was very different from anything else happening elsewhere, and also that this certainly was giving a lot of power to a third body. Again, this does absolutely nothing to facilitate harmony and cooperation in the workplace, because it does give the responsibility to settle differences to the third body. I will certainly at a later date be introducing amendments that would totally eliminate and strike out section 5, the purposes of this act.

**Mr Offer:** I have a question of the parliamentary assistant and ministry staff, whether they have conducted an analysis of the conflict of the preamble with their purpose clause, as is either found in Bill 40 or, as I expect will be hoped, in their opinion, to be changed. Have you conducted any analysis of the inherent contradiction that your purpose clause in the legislation has with your preamble to the act, and is that the reason you are asking for the preamble to be taken away from the bill?

1740

**Ms Murdock:** We are still speaking to section 3, are we, Mr Chair?

Interjection.

**Ms Murdock:** Section 3 was what you originally started speaking to.

**Mr Offer:** Yes, which is the—

**Ms Murdock:** —heading, "Application and Purposes of the Act."

**Mr Offer:** I'm directing my concerns to the "purposes" part of the heading. It is my understanding that you are hoping that the preamble of the act be deleted. I note you're shaking your head in support of that.

**Ms Murdock:** I am nodding my head yes.

**Mr Offer:** So you are hoping that the preamble to the Labour Relations Act in the province of Ontario is deleted. I am wondering whether you are doing so—actually, I asked the question why, but I am concerned that maybe you are doing so because of some inherent contradiction between the preamble and the purposes.

**Ms Murdock:** No. There are only five acts in all of Canada that have a preamble, one of which is the Ontario Labour Relations Act. You can't think of any legislation, and none of us could when we started looking through some of it, where you have both a preamble and a purpose clause. We feel that it needs clear directions rather than intentions, from a purpose clause as compared to a preamble, so we just think the purpose clause would be more effective.

In terms of the application and purposes of the act under section 3, where I thought you were heading, Mr Offer, was that you were saying it was a little premature as we hadn't even put in section 5 yet. However, since you never got to that, under section 3 I can't see how the comparison between the preamble and the purpose clause would have anything to do with that section.

**Mr Offer:** I don't know if Ms Witmer has any comments on this, but I brought it up at this point because I think you have to do so at the very earliest time, and the earliest time is when you say the act will now have an application and purpose. So if you don't deal with it now, then it makes it a little late down the line.

Sure, we're going to talk about section 5 of the bill, but I want to talk about the concerns. I think it's highlighted when the government wants to get rid of the preamble to the legislation. I think in your response you spoke about how you wanted it to be absolutely clear, which again highlighted concerns, because are you saying that the existence of a preamble and the existence of a purpose clause, if they are not in total sync with one another, are going to cause some major difficulties?

There are going to be lawyers coming before the board who are going to argue on the basis of the purpose clause and they're going to be going against other lawyers on the same question who are going to be making exactly the opposite argument on the basis of the preamble. What are we getting into, as far as the Minister of Labour is concerned?

**Ms Murdock:** You're right. You're a lawyer, Mr Offer, and you know full well that if you give a lawyer two different sections under any act, he will find all kinds of ways to interpret a different word from one to the other. So having both would be, I think, inexcusable and certainly cause all kinds of uses of the Ontario Labour Relations Board that would be non-productive, at the very least. I think too that if you go back to our discussion paper which we put out last November, it is very clear there that the preamble was to be replaced with the purpose clause to reflect the underlying objectives of the act more explicitly. I don't think we've ever not indicated how we are looking at this.

Now, if you're asking that section 3 be deferred until after this section is done, I have no objections to that.

**Mr Offer:** We'll take it now.

**Ms Murdock:** Aren't I nice?

**The Chair:** Want to answer that, Mr Offer?

**Mr Offer:** I'm sure it was just a comment. I would have liked to have that type of generosity in the sections for which I asked for a deferral.

**Mrs Witmer:** I have several questions for the parliamentary assistant. How many provinces did you say have a preamble?

**Ms Murdock:** No, I didn't say "provinces." I said there are five pieces of legislation that have a preamble. Preambles are generally not used legally, so they're rare to have, that's true, mostly because they are not interpreted within the legislation. You were right when you said earlier that it shows the intent of an act but that it is not the law.

**Mrs Witmer:** Are there any other provinces that have a purpose clause similar to the—

**Ms Murdock:** Oh, yes. Ontario has thousands of them in its legislation.

**Mrs Witmer:** No, no. Are there any other provinces—

**Ms Murdock:** In the labour act?

**Mrs Witmer:** —in the labour act—across Canada that would have a purpose clause similar to the one you're suggesting?

**Ms Murdock:** I'm not sure. Looking at my discussion paper, because we did have something on that—I don't have them with me. I can get it for you.

**Mrs Witmer:** I'd be interested in knowing whether any other provinces do have the type of purpose clause the government is suggesting. I have tremendous concerns. This is certainly a change, and this purpose clause that's being suggested here confers jurisdiction on the board to create law without reference to any specific provisions of the act. Certainly there are goals here that are to be accomplished regarding collective bargaining that I have a tremendous amount of concern about.

It's this purpose clause that is going to create the hardship in the province. It does anything but create a harmonious and cooperative and level playing field.

**Ms Murdock:** Mr Chair, section 3, is that not where we're at? We aren't at the purpose clause yet.

**Mrs Witmer:** I was looking for an answer as to what other provinces did have a purpose clause.

**Ms Murdock:** I had already answered that and said I wasn't sure, but that we would get the information for you. Sorry; I didn't realize you were asking it again.

**Mrs Witmer:** That suggests to me there are no other provinces that would be similar to what is being suggested here that would speak to the goals that are to be accomplished by collective bargaining and also the facilitation.

**Ms Murdock:** I was just informed by the ministry staff that BC definitely has a purpose clause. Now, whether it is to the same degree as ours, I can't answer that; I don't know. Most legislation—most, not all—has a purpose clause.

**Mrs Witmer:** I'm not concerned about the purpose clause; I'm concerned about what this purpose clause speaks to, and that is to—

**Ms Murdock:** We're not at the purpose clause yet, is what I'm saying. When we get there, I think that is the more appropriate time to discuss it. But I defer to the Chair for that ruling.

**The Chair:** You've got all the time you want, up to eight days.

**Mrs Witmer:** From our experience and from what we've learned in taking a look at this, purpose clauses are very rare in any type of legislation. There are not too many purpose clauses in legislation, so this is certainly an exception. I share the concern that has been raised by Mr Offer about this entire section.

This is probably one of the most contentious sections. I guess I'm just so surprised that the government has not made any attempt to even compromise on the purpose clause.

1750

**Ms Murdock:** We haven't come to those amendments yet, and that's where I'm saying we're not at the purpose clause yet. Until we get to that purpose clause, the government amendment will not be introduced.



**The Chair:** Does the parliamentary assistant want to distribute the proposed amendments to the purpose clause?

**Ms Murdock:** Yes. Thank you very much, Mr Chair. As I said, though, we are at section 3, or at least I believe we're speaking to section 3, and the purpose clause does not come until section 5.

**Mrs Witmer:** I guess it certainly would be beneficial for those of us who haven't had an opportunity to see what the government's proposing if we were given all of the information so that we could discuss this.

**The Chair:** Quite right. That could be said of every caucus, including those—

**Ms Murdock:** Yes. I haven't read all of yours.

**The Chair:** —who anticipate there are any motions down the road more than the government caucus has already indicated this afternoon.

**Mr Offer:** There are two matters which I think are brought forward in section 3. The parliamentary assistant is quite right when she states that we are not at this point dealing with the words of the purpose clause. What we are doing in this section is talking about the heading. I have some concerns, and I brought them out, because the heading says to people who get to this part of the act that there is an application and a purpose somewhere here. I think we have to deal with this.

I think Ms Witmer is quite right when she asks ministry officials what the experience is in other labour legislations that have a preamble and a purpose clause. I hope we can recognize that we can be getting into an area where a preamble and a purpose clause within the same legislation may at one time or another conflict in their direction.

I think this is the time to deal with this type of matter even though we're not dealing with the section and the actual words of the purpose clause, because is it the government's intent that you can have one or the other? Is that the reason the government has asked that the preamble of the act be struck out, because you can have, for clarity, one or the other?

My question then becomes, what does the government, which is operating under closure, time allocation, do at the end of the day when this bill may in fact contain a preamble and a purpose clause? What do you do then? That is now the law of the land. It would seem to me it's irresponsible in the extreme to proceed when you have already discovered, and I think rightly so, by the way, the potential of conflict. I'd like to know from the government, what are you going to do?

I have a second question, and just a short question, by the way. I thought at the beginning of the day the parliamentary assistant indicated there were no further amendments until we passed a certain section, and now I have an amendment.

**Ms Murdock:** On section 5?

**Mr Offer:** Yes, section 5. I asked the question at the beginning of the day as to whether there were any further government amendments to the beginning of the act and I believe the parliamentary assistant indicated that we have all of the amendments by the government to, if memory

serves me correct, section 73 of the Labour Relations Act. I have now been presented with an amendment which is before section 73. I ask the parliamentary assistant, with all due respect, are there any more surprises?

**Ms Murdock:** No, there aren't. Actually, it was tabled.

**The Chair:** You were misunderstood on that matter?

**Ms Murdock:** Yes. The amendment was tabled but it was not distributed.

**The Chair:** All right. Mr Offer, your second question.

**Mr Offer:** My second question I just asked, and I thank you very much for the response. Now to the first question, which dealt with, what are you going to do to the real possibility of being left with a preamble and a purpose clause?

**Ms Murdock:** I have stated this already, but again, what I would suggest is that we defer section 3 and section 4 and move to section 5, which would resolve much of this discussion. If that requires a motion, Mr Chair, I'll so do that.

**Mrs Witmer:** It's not going to resolve it.

**Ms Murdock:** At least, then, we'll be on a debate on what you're talking about.

**Mr Offer:** No.

**Ms Murdock:** Yes, you will, because if you read the second page of the amendment before you, you'll see where that will go. In other words, if we were to debate section 5 of the bill and for the moment defer sections 3 and 4, I think we would get much of the discussion that we've been having for the past 20 minutes resolved.

**Mr Offer:** When you say "section 5," you're talking about the handwritten section 5?

**Ms Murdock:** Yes.

**Mr Offer:** Because I have just noted on page 2 of your amendment to the purpose clause—

**Ms Murdock:** Sub 3, yes.

**Mr Offer:** Clause 3; I'm sorry. Page 2 repeals the preamble of the act.

**Ms Murdock:** Yes.

**Mr Offer:** So you are expecting that the repeal of the preamble, as contained in the section, is in order and you don't need unanimous consent, which you asked for at the beginning of the hearing.

**Ms Murdock:** Yes, there were three avenues of going and we decided to go this route, since I hadn't heard—

**Mr Offer:** I know of two; I wonder what the third one was.

**The Chair:** When that motion is put, obviously there will be determination of whether it's in order in the same regard that there was a determination whether your motion dealing with section 1.1 and Ms Witmer's motion dealing with section 1.1 were in order. I expect that the Chair would be consistent.

**Ms Murdock:** Thank you. I'll continue discussing it, but I just think it would probably make things much easier and more orderly, since this seems to be a bone of contention, if we were to discuss it and then move back to sections 3 and 4. That depends on what you want to do, the

opposition members. Do you want me to move that, Mr Chair? I can so move.

**The Chair:** What do you want to do?

**Ms Murdock:** Defer section 3 of the bill and section 4 of the bill and move to section 5 of the bill.

**The Chair:** Is there unanimous consent in that regard?

**Mr Offer:** No.

**The Chair:** Okay, go ahead, Mr Offer. Are you still dealing with section 3 of the bill?

**Mr Offer:** Yes.

Interjections.

**The Chair:** Okay, go ahead, deal with it.

**Mr Offer:** I mean, the members have asked, "How come you've said no?" The request was to delete—

**Ms Murdock:** Not delete.

**Mr Offer:** To defer sections 3 and 4 of the bill.

**Ms Murdock:** Till after we finish 5.

**Mr Offer:** The way I read section 4 is that it speaks to a number of other areas: agriculture, physicians, horticultural operations. I don't know why you would be asking for the deferral of section 4 of the bill.

**Ms Murdock:** Fine, we'll continue with 3. I don't care how you want to do this.

**The Chair:** Let's carry on with 3, Mr Offer.

**Ms Murdock:** It's 6 o'clock.

**The Chair:** Thank you. No further discussion regarding 3. We're dealing with subsection 4. Ms Witmer moves that subsection 4(1) of the bill be struck out.

**Mrs Witmer:** This amendment maintains the exclusion for domestics. Throughout the discussion, during the five weeks of hearings, we did hear concern expressed about the need to ensure peace and wellbeing for families who depend on domestics for care of their families. I guess the question was raised, what would happen in the case of a strike?

Under the replacement worker provisions, the parents are barred from using any other person to take care of their children unless the children are in need of special protection as defined in the Child and Family Services Act. Since most parents normally do not have other employees in the household, family members or friends could not take care of the children during such a strike since the ban on replacement workers includes a ban on persons whether they are hired for pay or not.

I guess some of the questions we have to ask ourselves are: Would the firing of a domestic be subject to just-cause protection? Would this prevent a family from making decisions that are in the best interests of the children?

Certainly, we are moving this amendment because we are concerned about the wellbeing of families and the need to make sure that children are provided for.

**The Chair:** Thank you. It's 6 o'clock and we're adjourned till 3:30 tomorrow, or the end of routine proceedings.

The committee adjourned at 1801.



## ERRATUM

No.	Page
R-32	R-1101 was not printed

**Should read:**

agreeing to sit for five weeks because the government House leader limited the hearings to five weeks. What is it that you're frightened of hearing from Mr Kirkby? We've got 25 minutes left. We can hear from Mr Kirkby now and we still will finish by 9 o'clock. Why is it that you don't want to hear from somebody? Is it a viewpoint that you're concerned about having aired in a public forum?

**The Chair:** Further discussion or debate?

**Mrs Marland:** We'd like a recorded vote, Mr Chairman.

**The Chair:** One moment, please.

**Mr Turnbull:** Yes, I would like a recorded vote.

**The Chair:** You didn't want to close?

**Mr Turnbull:** He's not a walk-on, and that was the agreement that was made by the people. We have plugged in those people, as we've gone along, to my knowledge, who've been on the waiting list. He is on the waiting list, so he's not a walk-on. He attended all last night. I was curious, because I had never met the gentleman before. I went and introduced myself last night. He said he was the author of this brief, and it's from a worker's point of view, about his right not to be in a union. I think we should hear that.

**The Chair:** Thank you, sir. About to call the question.

**Mrs Marland:** A recorded vote.

The committee divided on Mr Turnbull's motion, which was negated on the following vote:

**Ayes-5**

Marland, McGuinty, Offer, Phillips, Turnbull.

**Nays-6**

Hayes, Hope, Huget, Murdock (Sudbury), Ward (Brantford), Wood.

**The Chair:** I want to thank the committee members for their cooperation during the course of today. I want to thank the participants who presented their views to the committee. I want to thank those people who expressed interest in the committee's process by attending here at Queen's Park and watching this committee do its work, and those who watched this on the legislative channel.

I want to thank the staff, the research staff and Hansard staff as well as the clerk's office staff, who were crucial to the smooth operation of this committee, and of course the French-language translation people, who have worked very hard throughout the course of the day, even on occasion when people spoke simultaneously, which made simultaneous translation all that much more difficult, and of course the legislative broadcast people, who do an outstanding job of recording and broadcasting this and who will make videotapes of presentations in Beta and VHS, I believe.

In addition, of course, I thank people like Ms Marland who joined us throughout the day. Thank you very kindly, people. Take care. We're adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 2043.

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**\*Chair / Président:** Kormos, Peter (Welland-Thorold ND)

**\*Vice-Chair / Vice-Président:** Huget, Bob (Sarnia ND)

Conway, Sean G. (Renfrew North/-Nord L)

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McGuinty, Dalton (Ottawa South/-Sud L)

**\*Murdock, Sharon (Sudbury ND)**

**\*Offer, Steven (Mississauga North/-Nord L)**

Turnbull, David (York Mills PC)

Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgianne ND)

Wood, Len (Cochrane North/-Nord ND)

#### **Substitutions / Membres remplaçants:**

**\*Arnott, Ted (Wellington PC) for Mr Turnbull**

**\*Hayes, Pat (Essex-Kent ND) for Mr Klopp**

**\*Hope, Randy R. (Chatham-Kent ND) for Mr Dadamo**

**\*Lessard, Wayne (Windsor-Walkerville ND) for Mr Wood**

**\*Ward, Brad (Brantford ND) for Mr Waters**

**\*Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan**

**\*In attendance / présents**

#### **Also taking part / Autres participants et participantes:**

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Murdock, Sharon, parliamentary assistant to the Minister of Labour

**Clerk pro tem / Greffier par intérim:** Decker, Todd

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## Legislative Assembly of Ontario

Second session, 35th Parliament

# Official Report of Debates (Hansard)

Thursday 1 October 1992

## Standing committee on resources development

Labour Relations and  
Employment Statute Law  
Amendment Act, 1992

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Journal des débats (Hansard)

Jeudi 1 octobre 1992

## Comité permanent du développement des ressources

Loi de 1992 modifiant des lois  
en ce qui a trait aux relations  
de travail et à l'emploi



Chair: Peter Kormos  
Clerk pro tem: Todd Decker

Président : Peter Kormos  
Greffier par intérim : Todd Decker

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 1 October 1992

The committee met at 1530 in committee room 1.

### LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

**The Chair (Mr Peter Kormos):** It's 3:30. We're ready to commence. Routine proceedings have been completed some time ago.

**Mr Brad Ward (Brantford):** Is there a quorum, Mr Chair?

**The Chair:** Present are Mr Arnott, Ms Witmer, Ms Murdock, Mr Cooper, Mr Ward and of course myself. There is a quorum.

Section 4: No amendments? I believe there is one tabled.

**Mrs Elizabeth Witmer (Waterloo North):** Yes, there is one.

**The Chair:** Ms Witmer moves that subsection 4(2) of the bill be struck out. Do you want to speak to that? Any further debate?

**Mrs Witmer:** I did want to, yes. On section 4, we just started that discussion yesterday, and this amendment was intended to maintain the exclusion for domestics. It's because of our belief that we want to ensure that there is peace and wellbeing for families, and we're very concerned then that as a result of the change, domestics would have the right to organize. We're concerned what would happen, if they were given the right to organize, in the case of a strike.

Under the replacement worker provisions, the parents are barred from using any other person to take care of children unless the children are in need of special protection as defined in the Child and Family Services Act, and since parents normally do not have other employees in the household, family members or friends could not take care of the children during such a strike, since the ban on replacement workers includes a ban on persons whether they are hired for pay or not.

Furthermore, would the firing of a domestic be subject to just-cause protection? Would this prevent a family from making decisions that really are in the best interests of the children?

We believe that these are all concerns that do need to be addressed, and just as the government has taken the time to recognize the very special needs of the family farm and has recognized that extending the right to strike to farm employees would be totally inappropriate given the

need for continuing animal care, the question I ask is, should not the special needs of the private home and the need for continuing care of our children also receive similar treatment? Thus, we would move this amendment to maintain the exclusion for domestics.

**The Chair:** Any further discussion? All in favour, please indicate. Opposed? The motion is defeated.

We are still dealing with section 4. There is an amendment to subsection 4(4): "I move that subsection 4(4) of the bill be struck out." That is moved by Ms Witmer. Do you want to speak to that?

**Ms Sharon Murdock (Sudbury):** Is that 4(2) or 4(4)?

**The Chair:** That is 4(4). We just did 4(2). My apologies, the last vote was on subsection 4(1).

**Mr Ted Arnott (Wellington):** Mr Chairman, I would like to ask you a question. Is it proper that we are continuing to operate here without any representation from the Liberal Party?

**The Chair:** You will recall that several weeks ago it was upon unanimous consent of the committee, after direction by the subcommittee, that notwithstanding the absence of any or all members of the caucus, the committee will resume at the time stated. I understood that to be for the whole course of the consideration of Bill 40. If people want to retract their unanimous consent in that regard—is that what you are suggesting?

**Mr Arnott:** It was merely for clarification.

**The Chair:** But is your position the same as it was when we started the proceedings?

**Mr Arnott:** The position of our party has not changed, I guess.

**The Chair:** The New Democratic Party government caucus?

**Ms Murdock:** If the subcommittee recommended that and we passed it, then I guess we stand by it.

**The Chair:** All right. Subject to any other direction, that's the way we're going to proceed.

My apologies. We're voting on subsection 4(1), Ms Witmer's motion that subsection 4(1) of the bill be struck out. All in favour?

**Mrs Witmer:** Before we do that, Mr Chairperson, yesterday we received the government motion on section 5 of the bill. That's inaccurate as printed here. Do they have a new copy for us?

**The Chair:** What do you mean it's "inaccurate"? A motion is a motion.

**Mrs Witmer:** No, no. If you look at number 2, it should say, "by striking out subparagraph 2i" instead of "2ii." I just wondered if they were going to give us a corrected version.

**Ms Murdock:** Do you mean 2ii?

**Mrs Witmer:** Yes, 2ii. Should that not be just 2i?

**Ms Murdock:** You're right. You are correct, and I thank you.

**Mrs Witmer:** Are we going to get a corrected copy of that for discussion purposes today?

**The Chair:** Maybe somebody will share the parliamentary assistant pay with you. What a novel proposition.

**Ms Murdock:** Do you want part of that for a month?

**The Chair:** Dealing with Ms Witmer's motion regarding subsection 4(1)—

**Mrs Witmer:** Subsection 4(2).

**The Chair:** We erroneously voted on subsection 4(2) because I called 4(2) instead of 4(1), and I apologize for that. Your motion, Ms Witmer, that subsection 4(1) of the bill be struck out: All in favour? Opposed? The motion that subsection 4(1) of the bill be struck out is defeated.

We're now dealing with Ms Witmer's motion to the following effect. She moves that subsection 4(2) of the bill be struck out. Ms Witmer.

**Mrs Witmer:** Yes. We would like to move this amendment that totally removes reference to "agriculture" from the bill.

Obviously, the Ontario Federation of Agriculture in its presentation has put forward some excellent points in support of our amendment. As we all know, in January of this past year the Minister of Labour did establish the Task Force on Agricultural Labour Relations with a mandate to advise the government on an appropriate course of action as far as agriculture and labour relations are concerned.

In June that task force unanimously recommended the extension of organizing rights to farm workers. They recommended that it be established within the framework of a separate agricultural labour relations act. Then, on August 27 of this year, the Minister of Labour announced that the government had accepted all the recommendations of the Task Force on Agricultural Labour Relations and asked the task force to advise the government on the specifics of an agricultural labour relations act by early this fall.

As a result of the action that has been taken by the Task Force on Agricultural Labour Relations and as a result of the request by the minister that it take a look at the specifics, we are recommending that all references to agriculture should be removed from Bill 40. In contrast to the reception that was given the task force report, we must remember that the OFA told us that the farm community does not welcome Bill 40. If adopted, the relevant amendments would transfer the prerogative of applying the Ontario Labour Relations Act to agriculture from the Legislature to the minister acting by regulation.

Farmers are objecting to Bill 40 for two reasons. First, they believe it circumvents the authority and discretion of the Ontario Legislature on a fundamental matter of labour market policy. Application of a labour relations regime to an entire sector of the economy is not an administrative matter to be left to the best judgement of the minister of the day. Generally the Legislature, not the Lieutenant Gov-

ernor in Council, should decide to whom statutory protections and responsibilities apply.

Secondly, farmers object to Bill 40 because the amending provisions of Bill 40 signal—and this is very important—a lack of faith in the ability of the Task Force on Agricultural Labour Relations to develop a workable labour relations regime for the farm workplace. Unfortunately, the apparent mistrust undermines the process and compromises its ability to achieve consensus, and for that reason—

**The Chair:** Any further discussion? Mr Offer.

**Mrs Witmer:** I was going to say that for that reason, we in the Ontario PC Party believe very strongly that the reference to agriculture should be totally removed from the bill.

**Mr Steven Offer (Mississauga North):** With respect to this amendment, I wholeheartedly agree. It is in fact one which I was to move myself.

I think we have to take a little bit of a look at this issue. In dealing with agriculture and horticulture and silviculture there was a task force set up, and I think the work, by all accounts I have heard by the task force members, was extremely well done. I think they looked at a variety of issues. They weighed, assessed, analysed and looked at its impact and implications and at the end of the day, I believe they came out with a report which was six points, but was also unanimous. It isn't easy to get unanimity. We strive for that, we hope to get some consensus, but this report came up with six recommendations unanimously.

#### 1540

One of the recommendations is that there should be a standalone piece of legislation which would apply to agricultural workers. It is my recollection that the recommendation for standalone legislation was unanimous and was looked upon with some hope.

Having said that, it is also important to recognize that what was to be contained within the standalone piece, what were going to be the provisions, had not yet been discussed. They knew this was the first step of a fairly long, arduous journey, but they were willing to take a look at the issues and to look upon them in the context of a piece of legislation that stood by itself in dealing with agricultural workers.

What I am hearing is that Bill 40 really flies in the face of the work done by the task force and I think we have to realize this. I'm receiving telephone calls from people involved in different aspects of our agricultural field and they are saying, "We agreed on a standalone piece of legislation and we want to now take a look at what should be within it." We are now looking at Bill 40, which does nothing to forward that. It says that the minister can by regulation bring people into the Ontario Labour Relations Act who are involved in agriculture, horticulture or silviculture.

The task force was clear: They do not want to be part and do not believe they should be part of the Ontario Labour Relations Act. They believe there is a very real and distinct possibility of an agricultural labour relations act, but that is different from the Ontario Labour Relations Act.



They are worried, they are concerned, they are distressed that the work of the task force has been undermined.

I know we are speaking about subsection 4(2), because in subsection 4(2) we are repealing clauses (b) and (c) of existing section 2 of the Labour Relations Act. Now that's a total, clear, distinct exclusion from the Ontario Labour Relations Act. It's clear, it's total, it's distinct. There's no question about it and I believe there never has been. It says in the act, "This act does not apply," and I read from the current Ontario Labour Relations Act:

"(b) to a person employed in agriculture, hunting or trapping;

"(c) to a person, other than an employee of a municipality or a person employed in silviculture, who is employed in horticulture by an employer whose primary business is agriculture or horticulture."

The exclusion is absolutely clear and they are saying, "We want that exclusion to continue." That is why I speak directly to the point and to the amendment of 4(2), because though the wording looks very, very close, there are five words at the end of clause (c) which say "except as provided under subsection (2)." We're going to get into subsection (2) of the act down the line.

That is a major bone of contention with the agricultural community now. They worked long and hard on their task force. They worked together. They ended up with a unanimous report. One of the points called for a distinct and separate labour relations act, and I think they actually called it the agricultural labour relations act. Subsection 4(2) of the bill says that there is not necessarily going to be a separate piece of legislation. The agricultural workers in this province know that.

I have heard other stories about time constraints that they are being put under. They are worried. They said, "If you agreed with our task report"—and I believe, actually, that during the hearings, I can't recall which member, but when the Ontario Federation of Agriculture was making a presentation, Mr Hope—it was Mr Hope—stood to them and said, "I have today in my hand a press release—

**Mr Randy R. Hope (Chatham-Kent):** No, I didn't. You are dreaming now.

**Mr Offer:** Pardon me?

**Mr Hope:** You're hallucinating now.

**Mr Offer:** What did you say?

**The Chair:** Go ahead, Mr Offer.

**Mr Offer:** Well, Mr Hope will have an opportunity to express his opinion if he so wishes. However, maybe it wasn't Mr Hope, but indeed there was a—

**Mr Hope:** Now you're really hallucinating.

**Mr Offer:** Mr Hope was taking credit—

**The Chair:** Mr Hope has many opinions.

**Mr Offer:** He was taking credit for that press release, but the press release was waved at the deputants representing the Ontario Federation of Agriculture, saying that the Minister of Labour has agreed to the separate piece of legislation. Even the parliamentary assistant is shaking her head in the affirmative, because she was at the hearings.

**Ms Murdock:** Yes, we agreed to all of them.

**Mr Offer:** And I thought that was right. So what are we left with? In Bill 40 we are left with clause 4(2)(c) which has those magic five words at the end, "except as provided under subsection (2)."

If the Minister of Labour and the Ministry of Labour, as I know the officials are, are true to their word on this, then they will have no problem in accepting this amendment, none whatsoever. There will be absolutely no problem in accepting this amendment, which says to the task force, "We agree with the standalone piece of legislation."

If the government members vote this section down, it is saying to the members of the task force, those people who worked long and hard, "We might get you into this bill by regulation." You cannot deny it, those are the words of your own Bill 40. It is undeniable, and that's why, I can assure you, there are many members in the agricultural community who will be waiting to hear and to see how the members of the government vote on this amendment.

1550

I have indicated my support for the amendment. The agricultural workers and the agricultural community are very concerned that the government will not support this amendment, because what it does in those five last words is it allows agricultural workers in this province to be found under the Ontario Labour Relations Act by regulation. We're going to talk about subsection 4(4). We're going to talk about that in the next little while, but this is an important section in so far as it is in tandem with the next amendment of subsection (4). I know that if these two pass, then there would have to be a third amendment at the end of the day dealing with limiting the regulation-making powers under the legislation.

We are dealing with one of the main staples of our economy. We're not dealing with a small issue here. We're dealing with a very large issue. We're not dealing with a matter that has not yet been addressed, because it has been addressed. We are not dealing with a matter the issues of which have not been canvassed, because that task force did, and after—I don't know how long they were proceeding but I know it was a substantial period of time—they were clear and they were unanimous that there is the need for a standalone piece of legislation.

I'm going to be voting in favour. It's an amendment, as I indicated earlier, that I would have brought forward. I want the government members to think about this a little bit, because I'm sure that each of them, or many of them in their own communities have members in the agricultural field. They will be asked the question, "Why did you vote against this amendment if you are so certain that there will be a standalone piece of legislation?"

I am hopeful that the government members will stand behind the task force report. I'm sure that they've made speeches—I shouldn't say that. I'm sure that speeches could be made about how important that task force was and the report was and how important it was that it was done in a unanimous way.

**Mr Bob Huget (Sarnia):** That's today's game.

**Mr Offer:** Mr Huget has now risen to the occasion.

You're going to have to answer the question as to, if that's the case, if that's what you truly believe, then why would you allow subsection 4(2) as it is now in the legislation to be passed? It flies in the face of a unanimous report by the task force. It permits agricultural workers to be drawn in by regulation, something I believe the task force was adamantly opposed to.

I am certainly receiving a number of telephone calls and letters. I have been asked to appear at a number of events to state my position on this matter. My position is clear and my party's position is clear. We are in agreement that the exclusion, the prohibition, that now exists in the Ontario Labour Relations Act should continue, that there should not be any opportunity for any Minister of Labour to bring in agriculture and horticulture by way of regulation and that there should be an agreed upon, standalone agricultural labour relations act.

It's not easy to bring that in. There are many, many issues and hurdles to be overcome. There are many interests that have to be addressed, not just standing alone and saying, "We're in favour of a standalone piece of legislation."

There's a suspicion out there—let's be frank about this—that if 4(2) passes, there is ample opportunity for agricultural workers to be included by way of regulation and that there will be less of an impetus for the creation of such a standalone piece. I think it's a very real concern. I think it's a valid concern. It's one which I'm hearing all the time, and now, on this one clause, I have extreme concerns that if the government members vote against this amendment, many of the fears out there will be heightened.

**The Chair:** Go ahead, Mr. Arnott. On Ms Witmer's motion.

**Mr. Arnott:** Yes. I intend to support this motion. I know the farmers in Wellington county would support it and would want me to support it as well.

**The Chair:** There being no further debate, all in favour of the motion please indicate.

**Mr. Offer:** Mr. Chair, I think the parliamentary assistant wants to speak.

**Ms. Murdock:** I do want to speak to it, Mr. Chair.

**The Chair:** I thought you were indicating that you still thought I was number one.

**Ms. Murdock:** You're making a very broad assumption there.

**The Chair:** That was only one finger raised, wasn't it? Go ahead, Ms. Murdock.

**Ms. Murdock:** I think it has to be said, particularly after the comments made by my colleagues in the opposition, first of all, that you're right, the task force was instituted right after the discussion paper was put out, and at its behest, because it did have different kinds of concerns.

The six items very specifically are the standalone piece of legislation, the extension of the right to organize and bargain collectively to persons employed in agriculture or horticulture, prohibition on the right to strike or lockout and substitution of a dispute resolution process—all of this came from the task force—as well as the creation of a

conciliation, mediation and adjudicative service, the establishment of educational programs, and then the continuation of the task force with a mandate to continue what it was doing, with a report to come out yesterday, actually, but it has asked us for an extension of one month, so it's been given that as well.

Having said all that, I think it's really important to recognize that it's not any lack of faith in the task force or any apparent mistrust, as was mentioned. In fact, if anything, it is saying to them that they're going to have to determine for themselves which groups will remain under their standalone piece of legislation or which groups may end up staying under the Ontario Labour Relations Act. That's for them to determine, and therefore they are going to have to decide how the new act will delete the section, not in this section.

So we're not supporting that, but I want it clearly understood that it has no basis in terms of a lack of faith in the task force's abilities.

**The Chair:** Mr. Offer.

**Ms. Murdock:** Thanks for interrupting.

1600

**Mr. Offer:** I'd like to thank the parliamentary assistant for that answer because it brings out a few other issues I think we should be discussing.

The September 30—I didn't bring that up in my comments because—members of the government will recall my earlier comments, they were but five minutes ago. One of the things I had heard was that the government had said, "You've got to come up with something by September 30."

Now, I wasn't exactly certain as to what was being said, but they were saying that this September 30 is totally unreasonable. It is impossible to meet; it is a prescription for disaster; it is setting the stage for the government, if this part of the bill passes, to say: "Listen, we allowed them to try to come up with their own act. We gave them probably all of 30 days. We even gave them another extension for a whole 30 more days. They can't come up with that, so we're going to have to do it by regulation." It's interesting that this is what I heard. The parliamentary assistant, in many ways, has heightened my concern when she brought forward that September 30 date.

The other point I bring forward is that some people in the agricultural field will find themselves part of the act—the standalone piece, the agricultural labour relations act, whatever that is and whenever that may be—and some may not. This is a new set of rules and guidelines as far as I am concerned. What do you mean, some may and some may not? Is there an opt-in provision here that if you do not want to be part of the agricultural labour relations act, even though you do not want to be because of concerns with the legislation, we're going to get you into the Ontario Labour Relations Act and we're going to do that by way of regulation?

I have a feeling that what is happening here is that the task force, both as contemplated by the ministry and by the participants in the task force, on day one was looked upon in a very positive and hopeful light. I sense that as time



progresses there is a breaking up, that no longer are the task force members and their representative associations really in sync with the direction the Ministry of Labour may want them to be.

It would seem to me that this again is a further reason why it is imperative we give to the agricultural workers in this province the security they're asking for. They're asking for a vote of confidence, and we can do that by agreeing with this amendment and the following complementary amendment.

I know we're not yet speaking to the following amendment, but we will be. I am concerned that to vote against this amendment is to really say to the agricultural workers, "You're going to find yourselves in the Ontario Labour Relations Act or in the agricultural labour relations act." If you don't want that, this is saying, "Too bad; you're going to find yourself in it." I cannot allow that. I don't think anybody can allow that.

I don't think the parliamentary assistant, who I'm sure has people in her riding in the agricultural field—I certainly do, though my riding has become very urbanized in the last 10 or 15 years in the northern portion of Mississauga. We still have some agricultural operations in that area, and I think that we all should care very deeply about their concerns. You see, their concerns here are not on what a section says and what it means; their concerns are that this is the first step into being included into a piece of legislation that they, firstly, do not want to be included in, and secondly, in a manner that they find totally objectionable.

It is very big step which we are taking. I would think, Mr Huget, you have some constituents in the agricultural field. I'm sure that you would feel concerned about this. Mr Ward, I know. Mr Wood—

**Ms Murdock:** I think there's a point that needs to be clarified very specifically. The premise on which you're basing your argument is that, for instance, the September 30 date was chosen by us as the government or the Ministry of Labour, which is not the case at all. It was one of the recommendations that the task force itself came up with. They were the ones who set the September 30 deadline for themselves, and it was, specifically, "To advise in the design of an agricultural labour relations statute and a company administrative structure, as well as supportive educational programs for participants to the process."

They set their own date of September 30 and have now asked for an extension, so it is not the government and it is not the Ministry of Labour that has set this time frame. So I would say to you that you can't use the argument that you've been using for the past 10 minutes.

**Mr Offer:** You know, you bring that up, but that's not an argument which I made up.

Interjections.

**Mr Offer:** The interesting point is, that's an argument and a point which was conveyed to me. I didn't, as you will recall in my opening comments, speak about the date of September 30. You brought it forward and then I said, "My goodness gracious, I've received calls and letters on that September 30 date, that it is unrealistic."

**Ms Murdock:** Well, then, tell the task force that, because it chose it.

**Mr Offer:** The point that I am making here is that the people who are calling me are saying they are feeling that it is a date which is, firstly, unrealistic, because it is their thought that they have to have some sort of act agreed to by then. Certainly ministry officials will know that a piece of legislation takes much greater than 30 days. So they are saying that it is their belief they had to do this, and it is their concern that if they don't have the framework or whatever agreed to, this could be the beginning of the government saying, "Well, I know that you wanted such a standalone piece, but you can't agree as to what it should be, so we want to give all due consideration to the task force and so we won't proceed with a standalone piece." But it does leave the magic five words of the section that we are talking about, "except as provided under subsection," and then the number 2.

There is no response, there is no comment that a government member can make to that concern. If it is in fact the true desire of the Ministry of Labour to allow agricultural workers in this province to be protected and found under a standalone piece of legislation referred to as the agricultural labour relations act, then you will not permit the legislation to be changed to allow such a matter to take place by way of regulation. The task force doesn't want that. Nobody wants that. I know regulation falls under the following subsection, so we'll hold our comments to that until then. But the question will be: Are you in favour of the task force report and its recommendations, or aren't you? If you are, then you will vote against the section; you will vote in favour of the amendment. If you are not, in reality, then you will vote down this amendment.

1610

**The Chair:** All in favour of Ms Witmer's motion, please indicate. Opposed? Motion defeated.

**Mr Offer** moves that subsection 4(2) of the bill be struck out. That motion's out of order.

**Ms Witmer** moves that subsection 4(4) of the bill be struck out. Go ahead, Ms Witmer.

**Mrs Witmer:** Subsection 4(4)?

**The Chair:** Yes, ma'am.

**Mrs Witmer:** Okay. This amendment, again, removes the reference to agriculture from the bill. With the same type of arguments that have just been put forward regarding this section and the fact that there is a task force on agricultural labour relations that is advising the government on an appropriate course of action—as a result of that taking place, I believe very strongly that any reference to agriculture within this bill should be removed.

I would remind you again that the farm community and farmers across this province do not welcome Bill 40. They do feel very good about the task force report thus far, and certainly it is their hope that it is the task force which will decide the future course of action. As a result, we would like to see this totally removed.

I would also remind you again that if you include the agricultural community within Bill 40, you really are sending out a signal to the farming community that you do

have a lack of faith in the ability of the task force to develop a workable labour relations regime for the farm workplace. You know, if you're sending out that type of message, it's undermining the entire process that has taken place thus far, and it really is compromising their ability to achieve any consensus whatsoever.

So I would ask you to be very sensitive to and cognizant of the concerns of the farming community. They feel very comfortable with the task force. They do not feel comfortable with being included within Bill 40, and I would ask that you remove any reference whatsoever to agriculture from this bill.

**Mr Offer:** I have a few comments that I would like to make on this subsection. I spoke earlier about my support of the previous amendment and I spoke about my concerns if the government members voted against the amendment which has now allowed this subsection to come into play. I just can't believe the government members will not be aware of the very real concerns that are going to emanate through the agricultural community because of the way you have previously voted. You are just living in a fantasy land if you do not believe that agricultural workers across this province are going to be extremely concerned with what you are doing.

So I move to this amendment—and it is an amendment, again, which my party was ready to bring forward—that asks that subsection 4(4) of the bill be struck out. Subsection 4(4) of the bill is an amendment to section 2. Let's listen to what this now says, because this is what you are going to be called upon to do. “The act”—meaning the Ontario Labour Relations Act—“applies to a person employed in such class of agricultural or horticultural operations as may be prescribed by regulation.”

Remember what the current act says. The current act, the one that is in force in this province now, the one which agricultural workers and horticultural workers approve of and agree with, says, “This act”—meaning, again, the Ontario Labour Relations Act—“does not apply to a person employed in agriculture, hunting or trapping.” Bill 40 now says that the act does apply to these individuals “as may be prescribed by regulation.”

Two fundamental issues arise. The first is that we now have, or maybe soon will have—I am still hopeful that the government members will come to their senses. The Labour Relations Act of the province of Ontario does not apply to workers in the agricultural and horticultural fields. This section now says that in the province of Ontario the Ontario Labour Relations Act “applies to a person employed in such class of agricultural or horticultural operations as may be prescribed by regulation.”

When we step back and ask ourselves what that means, we all come to the same answer: We don't know what it means. We don't know what it means for the Ontario Labour Relations Act to apply to persons involved in agricultural or horticultural operations, yet the government is ready to pass that into law.

I'm confident that there are a great many people in this province who, when they find out what the government does—I hope they will not do this. I am still holding on with some degree of hope that you will not do this, but if

you do this, I am absolutely certain that the people outside this committee room will say: “How could they do that? How could the government say that the Ontario Labour Relations Act ‘applies to person employed in such class of agricultural or horticultural operations as may be prescribed by regulation’?” How can you do that when you haven't addressed what that means? How can you say, “You should be in this legislation,” when you don't know what the impact of that is?

**1620**

This is not a matter which was brought forward during our hearings in an ongoing way. I stand to be corrected, but I think we heard one submission from the Ontario Federation of Agriculture which dealt with this matter, and they were crystal clear: They are opposed, opposed, opposed to these changes, and here we are within moments of doing this.

What does this mean at harvest time? What does this mean to greenhouse operations? What does this mean to a variety of facilities across this province? I know that everybody has the same answer, and I know what they're saying: “We don't know what it means.” So my question is, why are you ready to bring it into law? Why are you ready to bring into law something which is going to affect so many people without knowing the ramifications? We're dealing here with a product which is perishable. We're dealing with the perishability of products on an hourly basis and you—hopefully not, but I am starting to be a little less optimistic—are ready to put that into law. I have some major concerns and reservations.

Now I go to the second part of my concerns—there are not 10 parts to my concerns, so there will be some degree of relief involved—regulation. Well, isn't this the case: Not only do you not know what it's going to mean; you are ready to wash your hands of it.

What does “regulation” mean? I know there are a number of members elected for the first time, but I know we are also into our third year and so everyone should recognize by now that “regulation” means changes can be made through the stroke of a pen by the minister, approved by cabinet. There isn't anybody in this room who has any say in this matter, except, of course, for the ministry officials. There aren't any elected members here, with due respect, who will have any say in that stroke of the pen.

When that happens, where are we left? Is there a process in the legislation for you to bring the concerns, positive aspects, negative aspects, opinions and comments of your constituents to the legislative floor? Will you have the opportunity to debate on the floor of the Legislature what your constituents say about the changes to how agricultural and horticultural workers are brought forward?

We know the answer to that. We know you will not have the opportunity because you can't debate regulations in the Legislature. They're not brought forward; you read about them in press releases. So what do you say to your constituents? The members in this room will have a harder go of it, though I'm hopeful they won't. But those who vote in favour of the provision in the bill or against the amendment that is proposed will not only have to say, “I can't bring forward your concerns in the Legislature,” but



you're also the reason for them because you voted the way you did.

What do you say when those regulations are brought forward, when your constituent greenhouse operations say: "When are the public hearings on that? We have some concerns"? We know what you're going to say, because we're all going to say the same thing. When it's done by regulation, there aren't any hearings. They say, "Well, when are you going to be coming to my community so that I can provide some input to these regulations?" You're not going to be able to say. You're going to have to explain to the groups that they're excluded. Then they're going to ask: "So why did you vote that way? What were you so afraid of in excluding that type of input, that type of consultation, that type of participation?"

The Chair will recognize that I'm not speaking about the new House rules, but notwithstanding, what do you say about those things? You voted in favour of those things. You've voted in favour of allowing change by regulation. That is the concern in a nutshell: firstly, that the Labour Relations Act now says that the act, again referring to the Ontario Labour Relations Act, does not apply to a person employed in agriculture, hunting or trapping. Bill 40 now says the act applies to a person employed in such class of agricultural or horticultural operations as may be prescribed by regulation—a double-edged sword: Firstly, they are in; secondly, they are in without consultation.

I am very much opposed to the inclusion of individuals without their input, without participation and without consultation. I'm very much opposed to us, legislators, not being able to deal with those matters on the floor of the Legislature to speak either in favour or against. That's our right; that's something we have. We can speak in favour or against. But there's something which is certainly common, whether one speaks in favour or against, and that is the right one has to speak. That isn't there with regulation.

Thirdly, when it is by regulation, there is no opportunity, however constrained, however defined, for hearings to take place through a committee of the Legislature. Don't ever think for a moment that a ministerial task force moving from community to community is a fine replacement for a legislative committee. There are concerns that people have with politicians today, but I'll tell you something: They want to be able to come to legislative committees where there is representation from all parties, where there are, in many cases, different viewpoints, where, in many cases, parties agree—and there are many cases where parties do not. But the people come and they feel there is a sense that there are those who want to hear what they're saying, and that's what happens in a legislative committee. Regulation takes that away.

1630

I believe strongly that to allow this to happen in this bill is to underscore the concerns that I am hearing in the agricultural community. This isn't something I make up; this is something that is responsive to letters and telephone calls I'm receiving. I am receiving almost frenzied telephone calls. I spoke with people in the evening, on weekends, and as I said, in my riding we are not by any stretch of the imagination predominantly agricultural.

My riding is part of a city, Mississauga. There's a commercial, a retail, an industrial and a residential sector, and there is an agricultural sector, but that is the sector that seems to be declining a bit as growth continues in the greater Toronto area. So for people to seek me out to express their concerns is sending out a very strong message that they are distressed with the direction Bill 40 is taking and they are distressed that the hopes, the great optimism that was there when the task force started its work, are being eroded by Bill 40, and they are right.

You could, by voting in favour of the amendment which takes away the right to prescribe by regulation, inject a new sense of faith and hope. If you vote against this amendment, you are going to cause concerns in this province the likes of which you just do not imagine. You will find them; they will be there. You may think, "Oh, my goodness, this just isn't the case." The fact of the matter is, it is absolutely the case, and you're going to have to ask yourself, and certainly answer to your constituents involved in these operations, why you permitted any piece of legislation to include people without their participation and without your ability to participate on the legislative floor or through a member in this Legislature through the committee process.

Remember that regulations are not just one day. It isn't just on a Tuesday that we receive the news release from the Minister of Labour re agricultural and horticultural operations. No, it will happen one day, but there will be more to follow. So what you are doing is building not only an issue which you cannot explain away—I mean, you cannot explain away that—you are building it because, remember, as you read the first set of regulations, my friends in the Legislature, and go back to your constituency and hear the concerns, this provision is still in effect.

And there will be more regulations and more inclusions and more exclusions and more people who find themselves—as we've heard today from the parliamentary assistant, if you're not in the agricultural labour relations act, they're going to get you in the Ontario Labour Relations Act, or maybe it will be vice versa. I don't know, but I do know this: that if I don't know, neither does any member in this committee know. You have to ask yourself, are you acting responsibly when you are allowing pieces and sections of legislation to pass, the impact of which, the implications of which, you do not know?

**The Chair:** All those in favour of Ms Witmer's motion? Opposed?

**Mr Offer:** I'd like a recorded vote on that.

**The Chair:** Fine, a recorded vote.

The committee divided on Mrs Witmer's motion, which was negated on the following vote:

#### Ayes—3

Arnott, Offer, Witmer.

#### Nays—6

Cooper, Hope, Huget, Murdock, Ward, Wood.

**The Chair:** The motion is defeated.

Mr Offer moves that subsection 4(4) of the bill be struck out. That's out of order.

Ms Witmer moves that section 5 of the bill be struck out. That's out of order.

Mr Offer moves that section 5 of the bill be struck out. That's out of order.

**Mr Offer:** Excuse me, Mr Chair. On section 5 of the bill, I move that section 5 of the bill be struck out, and section 5 of the bill—correct me if I'm mistaken—

**The Chair:** That motion's out of order.

**Mr Offer:** You've ruled that as out of order?

**The Chair:** Yes. If you're going to defeat a clause, you vote against it in clause-by-clause; you don't move a motion amending it. Thank you.

**Mr Offer:** That's fine. Thank you very much for that explanation, Mr Chair.

**The Chair:** Any time, Mr Offer.

Ms Murdock moves that section 5 of the bill be amended as follows:

"1. By striking out 'facilitating' in the second and third lines of paragraph 1 of section 2.1 of the act and substituting 'protecting.'

**Ms Murdock:** You are using the replacement motion, Mr Chair?

**The Chair:** Yes.

"2. By striking out subparagraph 2i of section 2.1 of the act and substituting the following:

"i. the ability of employees to negotiate terms and conditions of employment with their employer.

"3. By adding at the end 'and the act is further amended by repealing the preamble to the act.'"

**Ms Murdock:** I think it has been stated fairly clearly yesterday by both Mr Offer and Mrs Witmer how many people, particularly from the employer groups, came forward and stated their concerns over some of the wording in the section. In fact, it was the focal point by many of the presenters.

Certainly, if I went back into all of the presentations that were made to us, I can think of Project Economic Growth, the More Jobs Coalition, the Municipal Electric Association, Ontario chambers of commerce—all of them—and Inco from my own riding. Paul Nykanen himself was in here, and he stated that the two words that we are changing in today's amendment were lightning rods to the business community. As a consequence of their concern over those two words, we are changing the word "facilitating" in paragraph 1 and substituting "protecting."

But also, in subparagraph 2ii—no, single i. Sorry; I'm getting confused here. I just notice that we removed the word for the purpose of "improving," which again was stated to be a lightning rod for the business community. I believe that this demonstrates quite clearly that we have responded to the major concerns. It was almost without fail that these were the specific areas they were worried about, and we have shown—that's about all I have to say.

1640

**Mr Offer:** Mr Chair, I'd like a ruling on this motion. I asked the question on my section as to why my amend-

ment on section 5 was out of order. You clearly indicated that the reason is that you just speak and vote against it, if that be your wish. There is one aspect of this motion which I find troubling and I believe may now be out of order. I think we have to discuss that.

**The Chair:** Go ahead.

**Mr Offer:** That is number 3. I'm sure it will not come as a surprise to you. It says, "by adding at the end 'and the act is further amended by repealing the preamble to the act.'" I believe that is, first, a matter which is not at all alluded to in the current section 5. I hope I'm dealing with the right section; I'm referring to it as section 5 of the bill. The word "preamble" is not dealt with in section 5. In fact, I think we will remember some fairly lengthy discussion yesterday over section 3 of the bill, which spoke to application and purposes of the act, and my concern at that point that the word "purposes" shouldn't be there was struck down. However, here we have a question, and I believe it is out of order that—

**The Chair:** I understand your position.

**Mr Offer:** —the words "repealing the preamble" in a section which does not allude to the preamble is talking about a matter in a section of a bill that was not there before. It is as if you could pass a piece of legislation saying, "I move that we amend section 5 of the bill by the following and repeal the rest of the bill." I think, listening to the Chair's earlier ruling on section 5, it is a matter where you can't just repeal, you vote against. I believe that's what you said about my clause in section 5.

**The Chair:** It's exactly what I said.

**Mr Offer:** So in my opinion, it would be doing by this amendment that which you have said we could not do—and which I agree with, by the way—by my previous amendment, repealing section 5. If you don't want the preamble, you vote against the preamble. But I do believe it to be out of order to speak to another part in an act which is not part of the bill and bring it into another section of the bill which it has absolutely no reference to, in this case, the preamble. I believe it's being sort of fancy with the words—and I know why, because we had some discussion yesterday about that—but I do believe strongly that this is absolutely out of order, to try to repeal a part of the act through an amendment to a section to which it has absolutely no reference and there is no connection.

I believe this is an important ruling. I believe it would set and can set a precedent that would be extremely dangerous. It would allow people to repeal whole acts with one amendment to a section of a bill, as long as you put in the words "by repealing the rest of the act"; in this case, the preamble to the act. I do not believe that has ever happened. I fervently believe that according to the rules, according to practice, according to all of the other experiences in clause-by-clause, it is doing something through the back door which may be dealing with another problem. It would seem to me that the only way in which this could be done—maybe I shouldn't express my opinion as to how it could be done, except to say that I do not believe, in all frankness, that this is at all in order to try to do this



through an amendment to a section which has absolutely no applicability to, in this case, the preamble.

**The Chair:** Thank you. Ms Witmer, I trust you agree entirely with Mr Offer and join every one of his arguments?

**Mrs Witmer:** Yes. I'd like to take this opportunity to indicate that I do agree with Mr Offer for all of the reasons that he's put forward.

**The Chair:** Thank you. Mr Offer referred to precedent. Firstly, at the very beginning of this process yesterday Ms Witmer made a motion, moving that the bill be amended by adding the following: "The preamble to the Labour Relations Act is repealed and the following substituted." Ms Witmer successfully moved a motion amending the act, addressing specifically the preamble, without joining that to any other section of the bill; not the act, the bill. Then Mr Offer similarly moved that the bill be amended by the following section at the beginning of part II: "The preamble is repealed and the following substituted." Mr Offer successfully moved a motion, in order—he wouldn't move a motion that was out of order—that addressed the preamble, indeed very specifically repealed it.

I feel, among other things, that my ruling or my consideration of those particular motions was in order, and that is to say that they weren't ruled out of order. Too, Mr Offer speaks of precedent and I feel bound by the precedent that was established yesterday when Mr Offer's motion was accepted and debated and when Ms Witmer's motion was accepted and debated, both of them purporting to repeal or seeking the repeal of the preamble to the act.

This particular motion indeed does more because this motion creates a connection between section 5 of the bill, which is the purpose clause, and the repeal of the preamble. Clearly, although perhaps some people say they're not—what would you say—mutually exclusive, the fact is that section 5 is there in the bill and the intent of the amendment is to in effect substitute the purpose clause for the preamble.

So having heard that, having done what I did yesterday, neither of you having raised objection to what I did yesterday—and I wouldn't expect any, because as I say neither of you would move a motion that was out of order—I'm finding this motion in order, and that's that.

**Mr Offer:** I would like to get a clarification on this. I certainly do understand the point which you bring forward with respect to the motions that were brought yesterday, and I must say I had somewhat anticipated that that might be the precedent that one would use, firstly to indicate when those motions were brought forward. Members hope that they never bring motions that are out of order; certainly you never hope that. Sometimes, however, it happens.

I note that there was no ruling, Mr Chair, as to whether they were or were not out of order. There was no objection made to that. It is my understanding that to use as a precedent a ruling on an earlier day that was not made is something which I find a tad light. I think that I certainly could understand the point which you make, if there had been a motion made stating that this was not in order and that you had ruled that it was in order, and so I have a concern about using yesterday's introduction of an amendment to

the preamble as a precedent when the issue of in order or not was never raised by the committee.

The second point I would make—it almost sounds as if I should be gowned—is that this is an amendment to an existing section of the bill which does not refer to preamble.

1650

**Mr Hope:** Are you challenging the Chair?

**Mr Offer:** No, no.

**The Chair:** Go ahead, Mr Offer.

**Mr Offer:** I can't imagine where I would actually ever challenge a Chair, and I say that because I heard the comments—

**The Chair:** The last government removed that right.

**Mr Offer:** I said that I can't remember. I can't recall ever doing that or ever being able or ever thinking I would ever do that, but I do think that it is important for me, because I heard a comment by Mr Hope, "It sounds like he's challenging the Chair." Of course I wouldn't do that.

**Mr Hope:** The decision was made. What are you arguing the decision for?

**Mr Offer:** But I do have a very deep concern, again, over the two points, one of which I have finished speaking to, and that was to use as a precedent a ruling which was in fact never made, and secondly, to deal again with the section and bringing into an amendment to a section in a bill an aspect of the act to which it is not referable. Right now we have in Bill 40 the contemplated purposes of the act. It speaks nothing to preamble. You've thrown in preamble. There is no connection.

Mr Chair, I have listened carefully to what you have said. I have very, very grave concerns of precedents being followed on rulings that weren't made.

**The Chair:** Thank you. Ms Witmer, do you agree with Mr Offer and join in on all the criticisms he's made?

**Mrs Witmer:** I think Mr Offer has made an excellent presentation and argument and I would support him.

**The Chair:** All right. Notwithstanding that no debate shall be permitted on any decision of the Chair, pursuant to standing order 118, this is committee and not the House, and let's never forget that, which means that perhaps some more liberal interpretation of not only the standing orders but also the rules of procedure, in the interests of fairness, are appropriate.

Mr Offer talks about nobody having objected on a point of order to either his motion, which was debated and voted upon, or Ms Witmer's motion, which was debated and voted upon. Similarly, nobody raised a point of order on Ms Witmer's motion that section 5 of the bill be struck out, and notwithstanding that nobody objected on a point of order to that, I still ruled it out of order because it was obviously out of order. Similarly, nobody raised on a point of order an objection to Mr Offer's motion that section 5 of the bill be struck out, but notwithstanding that nobody rose on a point of order, the Chair still ruled it out of order because it was out of order. That's the first comment Mr Offer had.

The second comment is that there's nothing referable in part 3 of this motion by Ms Murdock addressing section

5 to section 5 itself. I understand what you're saying, but I'm sorry, I disagree with you, because to me there's very clearly a reference and a logical connection between the preamble and the repeal of the preamble and the purpose clause and the amendment of that purpose clause in the bill.

**Mr Offer:** Oh.

**The Chair:** That's the way I see it.

Having said that—and again, I regret the fact that Chairs or Speakers can no longer be challenged; I wasn't supportive of that rule change when it happened back before the last election and there are days when I would dearly love to see it in effect now—the committee has the capacity to appeal this ruling to the Speaker. I'll put the question to the committee. It can vote in support of this request or in opposition to it, and the question I put to the committee is: Is it the wish of the committee to appeal the ruling of the Chair to the Speaker? All those in favour of appealing that ruling? Yes, sir?

**Mr Offer:** I just want to ask one question. I know that you are well aware of the rules. This is a very serious matter, especially dealing with the appeal of a Chair. Could I ask for a 10-minute adjournment to think about how I'd like to vote on that? It's very important.

**The Chair:** That's on consent.

**Mr Offer:** Thank you.

The committee recessed at 1656 and resumed at 1714.

**The Chair:** I once again shall put to the committee the question: Is it the wish of the committee to appeal the ruling of the Chair to the Speaker? Those in favour, please indicate. Those opposed? Okay, it is not the wish, then, of the committee to appeal the ruling of the Chair to the Speaker. All right.

**Ms Murdock:** I have already spoken to section 5, Mr Chair.

**The Chair:** Any other debate? Mr Offer, go ahead.

**Mr Offer:** Though I was thinking about something else in our time that we were off, I did look at the replacement government motion on section 5 of the bill and I think the parliamentary assistant is correct with respect to that area of 2.1 and the impact that the words "improving their terms and conditions of employment" had with respect to many people coming before the committee.

I think it is clear that the concerns they did bring forward to the committee were very valid and could have had some major repercussions. It's my understanding, as I read this now, that 2i just talks about "the ability of employees to negotiate terms and conditions of employment with their employer" and it takes out the improving of terms, the word "improving." I think we heard through our committee hearing what the impact of that might be.

I also see that they've taken out in the first instance "facilitating" and moved it to "protecting" the right of employees to choose. When I read the section now, it says it ensures "that workers can freely exercise the right to organize by protecting the right of employees to choose." Then it goes on and says, "join and be represented by a trade union of their choice and to participate in the lawful

activities of the trade union." I can't recall many of the presentations that spoke to the issue of moving "facilitating" to "protecting." I think there was much discussion under the improving of terms, but not from "facilitating" to "protecting."

I must say this is almost bringing in, to my mind, a new substantive provision, as is going to be indicated in the purpose clause, and I have concerns, obviously, with the purpose clause. I have concerns because it really is, in my opinion, going to tip the balance. It's going to move the labour relations board, because this is going to govern the labour relations board.

This is a purpose clause. It is not a preamble, it is a purpose clause, and it is my opinion that the impact that a purpose clause has within a piece of legislation is much more severe than a preamble. The preamble of the current act—just bear with me for one moment—states:

"Whereas it is in the public interest of the province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees...."

That's a preamble which I can't imagine anyone having any real problem with. It's there, it states in general principles the direction, the form, that should be the rule in the province. In many ways it's the pavement on the road that people take in labour relations in the province. I believe it's worked well in the past and I believe it is there as a signpost for the future.

It is unfortunate that the government feels it should be repealed. It is unfortunate that they feel these agreed-upon, accepted, understood principles that now exist in the Labour Relations Act as a preamble should be ripped out of the Labour Relations Act of the province of Ontario and replaced with what as a preamble? Replaced with nothing, which is quite interesting.

1720

It seems to me that we shouldn't underestimate this. A preamble is important in sending out the message, in sending out the flavour, in sending out a perception. My goodness, how many times did we hear in our hearings about perception and how Bill 40 has been and continues to be perceived as bad for investment? Now there may be those who disagree. I haven't found anyone, but it is still perceived as being bad for investment.

The preamble to the Labour Relations Act does not have that connotation. It has a connotation that the province of Ontario respects the worker's right to join a union, respects a worker's right to take part in the lawful activities of a union, respects the need for harmonious relations. I think that can be equated to job creation. I believe we have been the recipient of that in this province, that preambles, principles, messages and positive perceptions—people sometimes think that perception is only negative—are equated to jobs, to people opening up businesses in this province, expanding existing businesses in this province, looking upon this province as welcoming capital, investment and job creation.



Now what we have in Bill 40 is not only that a purpose clause, the particulars of which I want to deal with in a moment—but the last part which now says, “The purpose of the act”—just think about what we’re saying here—“The purpose of the act is the repealing of the preamble of the act.” Just think about how people are going to read this. They’re going to say: “What’s the preamble of the act? What is this terrible thing that the government is seeking to repeal?”

They are seeking to repeal: “It is in the public interest of the province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.”

It is imperative. We’ve actually had a discussion around procedure in this matter. It is now the policy of the government of the province of Ontario, and in particular of the Labour ministry and minister, that the purpose of the Labour Relations Act, among other things, is to repeal the preamble. Do we think that sends out a message?

I know there are those who will have concerns and criticisms of previous impact studies that have been done that might be dealing with the impact this legislation will have, but I’ll tell you something: I do not want to vote against the existing preamble. It’s not replaced by anything. The preamble, the set of principles, the guidance, the road we travel down have now been taken away, and what is put in its place? Nothing. There is now no preamble.

I don’t think there’s any one of us whose constituencies have not been drastically and badly impacted by the recession, but people have lost jobs, many for the very first time in their lives. My goodness gracious, if there’s one thing I would want to hold out, it’s that the purpose of labour relations in the province of Ontario is to further harmonious relations between employers and employees, not to repeal them. I want to advertise that. That’s new investment. It’s new jobs. It’s sending out some message.

I know I spoke to the last point first, but I was very concerned with what this is going to do. I know the government wants to do this: It would probably just want to have the bill say in one section, “The preamble is repealed,” but it can’t do that. It has one other way it can do it, but it hasn’t done it that way. What it has done is that it has said the purpose of the legislation, the purpose of the act, the purpose of the Ontario Labour Relations Act of Ontario is to repeal the preamble.

Procedurally, though I still have some questions about that, you might be able to skirt around that. But I’ll tell you something: When all is said and done, that sends out just one crummy message for job creation and investment in this province.

Is it replaced by another preamble? Is it replaced by a set of principles that must guide employers, employees and governments in this province? No, we’ll have a blank spot, but we will have a purpose clause.

Now I move to the purpose clause, because I believe this is going to cause major difficulties. I believe this is going to be the subject matter of questions before the board. I believe, unless there are government amendments

which I have not yet seen, and I don’t believe that to be the case, that there will be, in a short period time, arguments made that sections themselves that are found within Bill 40 contravene the provisions contained within the purpose clause.

I think certainly around matters in organizing, in the right to know and in the right to choose freely it will be clear that those provisions, as proposed in Bill 40, will find themselves in contravention of the purpose clause in Bill 40. What is that going to do to the board? It’s going to be appealed. It’s going to be a matter of some judicial discretion. And do you know what? We’re going to be back here. We’re going to be back here dealing with this issue, because what you are doing is that you are making and giving to the board a web it will not be able to get itself out of.

#### 1730

Part of the legislation will say, “This is what must take place.” The purpose clause will say, “But it better not,” and arguments will be made. It is clear that arguments will be made.

What is the solution to this? Obviously, and it’s right in front of us and we don’t have to reinvent the wheel, the solution is the preamble that now exists in the act. The solution is to reinstitute the balance, the principles, the direction that now exist in the Ontario Labour Relations Act.

But the government is not only not doing that, it is specifically taking it away. They want to say that the purpose of the act is, “To ensure that workers can freely exercise the right to organize by protecting the right of employees to choose, join and be represented by a trade union of their choice and to participate in the lawful activities of the trade union.”

I’m not going to make any comments on “participate in the lawful activities,” because I think we are all in favour of and all agree with that, but doesn’t “freely exercise the right to organize” seem to indicate that if the bill is perceived in any way as not giving that right freely to organize it will be in contravention of itself?

Don’t you see what you’re doing? We’re going to be back here, but we’re going to be back here because of injustices that will have been done to workers in this province. I’m saying change it now before those injustices occur, because they will. Workers will be hurt by this type of purpose clause.

It is so clear that it is surprising. I don’t think I’m going to get any response from government members on this and I’m going to anticipate that this silence is their quiet agreement with the position I’m taking.

Interjection.

**Mr Offer:** The parliamentary assistant says don’t do that, and I say, if that isn’t the case, I would be very concerned. I’m going to presume that. I know they will most likely vote in favour of the government’s—

**Ms Murdock:** I would say so, yes.

**Mr Offer:** The parliamentary assistant says she would say so, but I can’t help but believe that they probably see the problem in the purpose clause. I can’t help myself but know that they understand this is going to cause difficulties for

workers. They are going to have a set of rules which is going to be prescribed, probably regulated, under the Labour Relations Act, which is going to fly in the face of the purpose of the Labour Relations Act. Who is going to benefit from that? Who benefits from confusion? I know who doesn't: workers.

**Ms Murdock:** Lawyers.

**Mr Offer:** The parliamentary assistant says lawyers benefit from confusion. Well, the parliamentary assistant is a lawyer. I'm just a—

**Ms Murdock:** So are you.

**Mr Offer:** I'm an MPP, but with deep concerns over this first area.

I want to move to the second area, not with respect to subparagraph (i), because I've already spoken to that, but with respect to (ii) and (iii). I think we have to realize what we're saying here, "The extension of cooperative approaches between employers and trade unions in adapting to changes in the economy, developing workforce skills and promoting workplace productivity."

Let's think about that. Is that the purpose of the Labour Relations Act? They may be principles and areas we would like to explore, and deal with areas we might wish to promote, but is that the purpose of the Labour Relations Act? Is that, in all fairness, something which is and must dictate to the labour relations board how it is going to be guided? I would have thought that areas such as now exist in this part of the purpose clause are ones which may be the subject matter of initiatives, discussion, changes. But a purpose? You are trying to put in a purpose clause some substantive changes? That's not a purpose. That takes away from the logical development and evolution of good employee-employer relations, which do exist and continue to exist.

I have grave concerns as to that type of paragraph and clause falling within a purpose clause, because you don't know how and what the impact of this will be. You don't know how this is going to be used in argument. All we do know is that it will be. You're anticipating that this is something which can only be used in a way which will work to the advantage of workers in this province. I hope that is correct. I have a feeling that there are some who might use this type of clause to do the opposite, to stop and slow down the natural development of good employee-employer relations, use this type of clause, which says "extension of cooperative approaches," to slow down the extension of cooperative approaches. Oh, it can be argued that yes, we are still extending cooperative approaches, but if it were done outside the dictates of a purpose clause, it would be done quicker. We will now slow it down.

I have grave concerns over that type of implication and ramification and I know the members are not aware what the implications will be, absolutely. That is not meant in any sense of criticism at all; it is just that in the real world you cannot anticipate, you cannot predict, how words in a purpose clause are going to be used.

There is more of an assurance if broad principles in a preamble are inserted. That you can deal with with a much

greater degree of certainty. In a purpose clause, you cannot. It is different. It is more mandatory.

It is something which is going to be used. We all know that. I just have a feeling that the government members think it's only going to be used one way. I am issuing a caution on behalf of workers of this province that it just might not be the case. You might be building a web we will be back here in a year trying to get out of, and the problem is that it will be done at the expense of injustice perpetrated on the workers of this province.

Why change something which works? Why change and move away from principles that have been and continue to be a signpost to invest in this province, that continue to send out a symbol of the respect that must and should and can be given to employers and employees in this province, a consultation of cooperation? That's what this purpose clause is ripping out. It's ripping out the signpost of investment and job creation in this province.

**1740**

I might have to speak a little quickly, because I have paragraphs 3 and 4 that I still want to deal with in the purpose clause. I know we are under such a terrible time constraint that we have absolutely no real opportunity to deal with some of these areas.

"3. To promote harmonious labour relations, industrial stability and the ongoing settlement of differences between employers and trade unions."

What does it mean, "to promote harmonious labour relations"? What does it mean, to promote "industrial stability"? Have you thought what it means, to promote "industrial stability," the arguments that are going to be made in order to maintain and comply with the purpose of the legislation? Do you have any idea what you are creating here? These arguments, I know, are going to be proven correct, in my opinion, but unfortunately, because I've already heard from the parliamentary assistant that you're going to be voting in favour of the purpose clause, it's going to be after we've been shown how difficult this is going to be.

"4 To provide for effective, fair and expeditious methods of dispute resolution."

Have you ever thought about what that means? What does it mean to provide for an effective, fair and expeditious method of dispute resolution? I'll ask one question: For whom? For employees? It doesn't say "for employees." For both parties? What happens when an effective, fair and expeditious method of dispute resolution is different for one party than for the other?

I don't disagree with the need to make certain there are effective, fair and expeditious methods of dispute resolution, but it shouldn't be in the purpose clause; it should be part of the legislation, the framework applicable to all people who find themselves within the Ontario Labour Relations Act, which I might remind government members, as they've now agreed, will probably include agricultural and horticultural workers. Maybe that type of framework is something that should be part of the legislation. In fact, it is not only wrong but totally improper to do in a purpose clause what should be done in legislative form.



Why is it so difficult for the Minister of Labour to unveil, in his opinion, how effective, fair and expeditious methods of dispute resolution should take place? Why can't the Minister of Labour do that? Why is it left to a purpose clause? We know what that's going to mean. It means the board is going to make up the rules.

I go back to my first question: effective, fair and expeditious for whom? I think we have some grave difficulties here. I think you are creating in a purpose clause something which you just won't be able to stop.

I know the time is short on this, and I have asked the Chair for a few moments just before the end of the day to bring up a matter I would like to discuss. So I'm going to leave it at that, and to say, in a word, "concern." I'm concerned about what this purpose clause says. I'm concerned about what its impact will be. I'm concerned that this purpose clause may not work in the best interests of the workers of this province. I'm concerned that there are areas and aspects in the purpose clause which I believe are best left to legislation.

I'm not saying not to deal with the issues; I'm saying leave it to legislation, to the framework of legislation. Let us hold on to and applaud the preamble that now exists in the Labour Relations Act. We should be sending out bulletins that this is the preamble. But no; in this proposal by the government we are left with, at the end of the purpose clause, "and the act is further amended by repealing the preamble to the act." What a message.

**The Vice-Chair (Mr Bob Huget):** Ms Witmer, any comment to make?

**Mrs Witmer:** Oh, I didn't realize you were finished, Mr Offer.

**Mr Offer:** Could I, on a point of order—I did speak with the Chair that there would be some time left prior to adjournment to deal with an issue I would like to bring before the committee; I wouldn't think more than 10 minutes. I don't know if the Chair is—

**The Vice-Chair:** Ms Witmer is entitled to comment, and I'm sure she can make her comment.

**Mrs Witmer:** Well, my comments will be longer than 10 minutes.

**The Vice-Chair:** But we've only got 12 minutes until the end of the day.

**Mrs Witmer:** But we're dealing with a very contentious issue, and I would personally prefer to do it at the start of a day rather than do part of it now—you tend to repeat yourself again on Monday—if that's agreeable.

**The Vice-Chair:** Agreed? That way you get all the important—

**Mrs Witmer:** Makes sense to me.

**Ms Murdock:** I'm in agreement with that. It makes good sense and Mr Offer has agreed with the Chair that he has a motion to bring, or an issue to raise.

**Mr Offer:** It's not a motion. In fairness, I did not indicate to the Chair what subject matter I would be bringing forward, but only that I was bringing something forward, just to give him some notice. I just want everybody to know exactly what I said to the Chair.

I have a concern that we are doing this clause-by-clause analysis in this room. Many people are very concerned about this legislation. There are others who are in favour of the legislation; there are people we've spoken to who are opposed. I am extremely concerned that this deliberation is not taking place in the Amethyst Room. I've walked by the Amethyst Room; I understand that yesterday and today nothing has been going on in the Amethyst Room. We had our hearings as best we could and many people watched those proceedings, and now that we are discussing this aspect of the legislation and when the room, I understand, is available, not to take advantage of that is—first, I would like to know, because two days have gone by, whether we can now move back in.

I just wanted to conclude. Mr Chair, I did indicate that I was going to bring the matter before you. I indicated to members of the committee that I did not tell you what the subject matter was. I did not believe it was going to be in the form of a motion, but rather a discussion, and I think you have heard and gleaned from my comments what my concern was.

1750

**Ms Murdock:** It seems to be a question to which I should know the answer. However, are matters in the Amethyst Room—

**Mr Offer:** It wasn't to the parliamentary assistant.

**Ms Murdock:** No, no, I'm part of the discussion. You raised a point. I'm asking the question on you—

**Mr Offer:** I don't want you to think I was directing it to you. I wasn't.

**Ms Murdock:** I know. I am a member of this committee. I'm not speaking as the parliamentary assistant; I'm speaking as the member for Sudbury. When the Amethyst Room is being taped, is the House, when it's in session, shown before the Amethyst Room, or how does that work? That's what I'm asking.

**The Chair:** Perhaps the clerk can respond to that. Mr Decker, please.

**Clerk Pro Tem (Mr Todd Decker):** When the House is in session, the House is broadcast on the legislative channel.

**Ms Murdock:** Until 6?

**Clerk Pro Tem:** Yes. Any committee that's meeting in room 151, when the House is also sitting, is taped and the committee session is rebroadcast, or as many committee sessions as there are during the week are rebroadcast in sequence on Fridays on the parliamentary channel.

**The Chair:** The committee should also know that when we are in the Amethyst Room, automatically French language translation staff are brought in, who otherwise wouldn't be in there, and the broadcast services people, of course, have to apply their energies not only to operating the studio upstairs that deals with the Legislature, the assembly itself, but also they then have to split their staff up and move some of their staff downstairs into the room adjoining the Amethyst Room, where they monitor and supervise the taping in the Amethyst Room.

Are you making a motion, Mr Offer?

**Mr Offer:** If that's what it takes, I certainly would.

**The Chair:** One moment. Before that, is there any consensus here that doesn't necessitate a motion?

**Ms Murdock:** The only concern I have, and it's just an observation I've made since I became a member in 1990, is that whenever television cameras are around, the theatrics that accompany the camera usually increase. It is not a tested observation, by any stretch of the imagination, it is simply something I have noted, and I would have some concern about that. But I agree with Mr Offer that there are lots of people, including my father, who want to know what's happening in this committee.

**The Chair:** May I make one further comment just by way of information? I am advised by the clerk that this committee room 1 is the committee room which is regularly assigned to the resources development committee. At the same time, though, during yesterday and today there were no other committees meeting, so nobody would have been displaced. The clerk isn't aware at the moment which committee is usually associated with or whose home plate is in the Amethyst Room, but it would be a matter of prevailing on the Clerk and displacing that other committee, because it will, as I understand it, start sitting next week, this week being a short week, a strange week.

**Mrs Witmer:** I would certainly concur. This is a bill of great importance to the people in this province, and I was impressed with the number of people who took advantage of the opportunity to watch the proceedings during the summer and who are very interested in the discussion that's taking place. I think we have an obligation to inform the public about the amendments which the government and the opposition parties have introduced and also the discussion around those amendments. I strongly support moving to the Amethyst Room if that's at all possible.

**The Chair:** Can I interrupt before Mr Arnott and make one further observation? Perhaps I'm the only person concerned about this, in which case it means nothing, but when we're in the Amethyst Room, the one television set there is used to monitor what's being taped in the Amethyst Room as compared to monitoring the House. What that means is that people like me who are anxious to participate in this most important debate about stripping away from innocent accident victims what few rights the last government left to them and betraying a profound promise that this party made in the last election campaign and as it sat in opposition during the last Legislature—I don't know whether I speak for anybody else; I have enjoyed being able to monitor the proceedings in the House from this room. Again, I make that as an observation.

**Mr Arnott:** There is no more important bill that will be coming before this Legislature in this term of this government than Bill 40. I think it's definitely in the public interest that it be on television.

**The Chair:** Where does it rank with respect to the auto insurance bill? Perhaps you'd consult with your critic first.

**Mr Hope:** Mr Kormos, I agree with you about a piece of legislation that's important to a lot of people out there. Furthermore, I know my own constituents who work most Fridays, the working people I represent, don't always have the ability to watch TV on Friday. They've asked me how they make sure they can obtain not so much the Hansards but the final product, because they understand the political ramifications and the political intensity that's involved in this piece of legislation. What they're looking for is the final product.

I said, "If you're interested in what's being said, there's the ability to access Hansard, which is always available upon request." A lot of people have taken that into consideration. But where they are really focusing their attention is the final product, because everybody has had their input into this legislation and they thought it was most appropriate.

I agree it's important for us as members of the Legislature to pay attention to the debates going on both in here and in the House and make sure we can communicate all aspects of the legislation. I disagree with Mr Arnott: All pieces of legislation produced in the Ontario Legislature are important to all people of this province, and I would like to try, as the member representing the constituents of Chatham-Kent, to be up on as much of all the legislation as possible, both in the House and in committee, making sure I'm making informed decisions on behalf of the people I represent.

I would say it would be most appropriate to stay in the confines of this room and proceed to get the eight sessional days and then to move into committee of the whole House, where the public will have from 1:30 till 6 o'clock, and reruns after that, to make sure the appropriate part of the debates are there.

**The Chair:** Is there any further discussion on this matter? Mr Offer, did you want to make a motion?

**Mr Offer:** Yes. I'll move that the clause-by-clause deliberation of the resources committee dealing with Bill 40 be moved to the Amethyst Room so that the public will have the opportunity to view the deliberations taking place over the clauses that make up this bill.

**The Chair:** The motion's on the floor. Mr Arnott. Interjection.

**The Chair:** We're not voting on it until people have spoken to it. That's the democratic way.

**Ms Murdock:** I thought we had spoken to it.

**The Chair:** Any further discussion on the motion? All in favour, please indicate. Opposed? The motion is defeated.

It's 6 o'clock, and we're adjourned until Monday at 3:30 or the end of routine proceedings. Thank you, people.

The committee adjourned at 1759.











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**\*Vice-Chair / Vice-Président:** Huget, Bob (Sarnia ND)

Conway, Sean G. (Renfrew North/-Nord L)

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**\*Wood, Len (Cochrane North/-Nord ND)**

#### **Substitutions / Membres remplaçants:**

**\*Arnott, Ted (Wellington PC) for Mr Turnbull**

**\*Cooper, Mike (Kitchener-Wilmot ND) for Mr Klopp**

**\*Hope, Randy R. (Chatham-Kent ND) for Mr Dadamo**

**\*Ward, Brad (Brantford ND) for Mr Waters**

**\*Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan**

**\*In attendance / présents**

#### **Also taking part / Autres participants et participantes:**

Murdoch, Sharon, parliamentary assistant to the Minister of Labour

**Clerk pro tem / Greffier par intérim:** Decker, Todd

#### **Staff / Personnel:**

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Hopkins, Laura, legislative counsel



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## Legislative Assembly of Ontario

Second session, 35th Parliament

# Official Report of Debates (Hansard)

Monday 5 October 1992

## Standing committee on resources development

Labour Relations and  
Employment Statute Law  
Amendment Act, 1992

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Journal des débats (Hansard)

Lundi 5 octobre 1992

## Comité permanent du développement des ressources

Loi de 1992 modifiant des lois  
en ce qui a trait aux relations  
de travail et à l'emploi

Chair: Peter Kormos  
Clerk pro tem: Todd Decker

Président : Peter Kormos  
Greffier par intérim : Todd Decker

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 5 October 1992

The committee met at 1538 in committee room 1.

### LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992 LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

**The Chair (Mr Peter Kormos):** Go ahead, Ms Witmer.

**Mrs Elizabeth Witmer (Waterloo North):** I'd like to speak, at this time, to section 5 of the bill, the replacement government motion that has been proposed. I'd just like to preface my comments by indicating that section 5 would, for the first time, enshrine an extensive, new and very untested purpose clause within the legislation itself. This is going to mean that all other aspects of the legislation will be affected by this purpose clause.

I'm concerned because I believe this purpose clause destroys the delicate balance in the legislation. It's the purpose clause that's going to influence the Ontario Labour Relations Board to favour the interests of unions when it considers issues arising from negotiations or attempts to organize, because that is the intent of the purpose clause.

In the past we had a preamble, but we did not have a purpose clause such as the one that's being proposed here; in fact we didn't have any purpose clause. However, this amendment is going to effectively repeal the preamble and add this new, untested and very extensive purpose clause.

In the past, the preamble was always referred to for guidance by the Ontario Labour Relations Board, and its impact was tempered by its position. It expressed intent, but it was never treated as part of the law. However, by now including this purpose clause in the body of the legislation, that certainly does change all of that, and this purpose clause becomes a very substantive part of the legislation, which is subject to the Ontario Labour Relations Board and perhaps to judicial interpretation as well. We believe this does represent an unwarranted infringement on the collective bargaining process.

I'd just like to talk about the purpose clause a little bit, and share with the government the fact that although this purpose clause does have some precedent in Ontario, there are actually very few recent provincial statutes which do contain a purpose section. Where you do have a purpose section, the purpose, unlike the purpose clause in Bill 40, is expressed in very general terms.

For example, the Pay Equity Act states in the purpose clause, "The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes." Another example of a

purpose clause is found in the Environmental Protection Act, which shares the same general approach to articulating the statutory rationale. It says, "The purpose of this act is to provide for the protection and conservation of the natural environment."

These two examples of purpose clauses I have just shared with you stand in stark contrast to the purpose clause in Bill 40, because the purpose provisions of both the Pay Equity Act and the Environmental Protection Act do not add to or supplement the remainder of the statute. One needs to consider the substantive provisions to determine how the "systemic discrimination" in the purpose clause of the Pay Equity Act is to be eliminated, and the environment protected in the Environmental Protection Act. So there is a real distinction.

There's another distinction as well. The Pay Equity Act and the Environmental Protection Act have contained general purpose provisions from the date of their enactment. However, we are dealing here with the Labour Relations Act. It's a very mature statute. Its provisions, over the years that it's been enforced, have been the subject of considerable interpretation. Unlike the other two examples, there is here in this case a tremendous potential for disruption in attaching new purposes to a statute with a history in developed jurisprudence.

The purpose clause does create a number of very specific problems. It has the potential to disturb the existing collective bargaining law, because this purpose clause is really an invitation to the OLRB to revisit its established jurisprudence. This approach to reform could be very disruptive and it could be unpredictable. If the government really has identified serious problems emerging from the board case law, for example with respect to the duty to bargain in good faith, the Legislature should be remedying this problem, not the purpose clause. Inviting a review of the known rules and standards without any specific focus is going to have a very unsettling impact on industrial relations. Neither of the labour market parties is going to be in a very secure position if this law is uncertain.

This is going to change the Ontario Labour Relations Board from being a neutral and impartial referee to becoming an advocate for labour. No longer will the board only interpret a single set of evenhanded rules ensuring that the process of certification and collective bargaining are administered fairly. The board really is now going to become the proactive arm of government, and in some ways it does and will have a relationship to Bill 80. It's going to go beyond the process into the content and the substance of both the certification and the bargaining, as I've just alluded to, and it's going to further the interests of organized labour.

I'm very concerned that if Bill 40's intent is to ensure harmony and cooperation in the workplace, this purpose

clause really doesn't do anything to encourage that harmony and that cooperation in the workplace.

In paragraph 1 of section 5 of the bill, we see that the bill is identified as being there to protect the rights of employees to choose, join and be represented by a trade union of their choice and to participate in its lawful activities. My question is, what about the rights, the choice, of those employees who do not want to join a union? Who or what body is going to protect those individuals?

**The Chair:** Do you want Ms Murdock to respond now or at the end of your comments?

**Mrs Witmer:** At the end of my comments.

Why is there no equal protection for all employees to freedom of choice, freedom of protection? Furthermore, given the likely role of the purpose clause in influencing the jurisdiction of the OLRB, we believe this is going to lead the board to find in favour of unions whenever the balance in a case is close. We believe this is improper and it must be changed.

The OLRB should remain an impartial arbitrator of the interests of employees, employers and unions alike, and the impartial arbitrator is extremely important, just as it was formerly neutral and an impartial referee. It cannot be perceived to favour one group over any other groups. That's the change, unfortunately, that has occurred. This is where the balance, unfortunately, has shifted. That's why I'm so concerned that we're not going to see the cooperation and the harmony that I know we're all looking for.

If we take a look at paragraph 1 of section 5 where it talks about the purposes of the act, "To ensure that workers can freely exercise the right to organize...", the government has changed the word "facilitate" to the word "protect." I believe that word should be replaced with a word such as "recognize" or "allow" because that would still be consistent with providing every person the freedom to join a trade union of his or her choice and to participate in its lawful activity.

I'm not sure that we should go as far as suggesting that the purpose of this act should encourage, support or help in the process of unionization, because if we do that, we are not giving equal protection to those individuals who do not choose to join a union, and somehow it gives the impression that if this is the purpose of the act, to at first facilitate and now protect the right of employees to choose, join and be represented, the government is solely interested in the rights of those employees wanting to join a union; in other words, the rights of unions rather than the rights of all employees.

1550

Again, I believe the board is intended to be a neutral third party and should not become involved in the process of protecting the rights of employees to choose and join a trade union. It now appears the board's going to be forced by the purpose clause to take a much more active role.

If that's the case, it should be in recognizing or allowing rather than protecting organization. Let's face it, sufficient facilitation towards unionization is going to be done by the Legislature once we approve the other changes

within this bill. We're still going to see that happening afterwards anyway.

If we take a look at paragraph 2, which says, "To encourage the process of collective bargaining so as to enhance, (i) the ability of employees to negotiate with their employer...terms and conditions of employment," the question I have is, what does "enhance" mean? Even though the government has removed from this section "the ability of employees to negotiate" and it's removed "with their employer for the purpose of improving," the word "enhance" still suggests to me that the same purpose could be included within this provision, and I'd certainly be interested in knowing what the definition or the intent of the word "enhance" is here. It could still suggest that this could affect the outcome of the negotiations in some direct way. I'm not convinced. It could have that intent and I'm concerned about that.

If we take a look at the next part, phrases such as "adapting to changes in the economy, developing work force skills" or "increased employee participation" could certainly take on a variety of meanings. For example, could "increased employee participation" be read to decrease the ability of a union to speak on behalf of persons within the bargaining unit? Many terms within this section are very ambiguous and they're not fully defined. Unfortunately it's going to be left to lawyers, to judges, to board members and to arbitrators to give this section and other sections meaning.

Again I ask, what is meant in the next section when we say we're going to increase "employee participation in the workplace"? What does that mean? There is no substantive provision in the act that deals with employee participation. The board may employ this language to create a new obligation to disclose information during bargaining on the basis that the employees cannot participate without that complete information. If that is to happen, then the board would be restoring the disclosure obligation which was originally proposed in the cabinet submission but was dropped from Bill 40.

What is happening here is that we have something in the purpose clause which goes far beyond the promotion of harmonious labour relations. There seems to be some intent of determining results, of deciding what is going to be included in the collective agreement. You could almost interpret this as being a bit of a shortcut or an alternative to collective bargaining.

We recognize that the government certainly does have the authority to introduce legislation to benefit special-interest groups, but we are concerned that this purpose clause is not reflective of the best interests of all people in Ontario and does indicate favouritism towards the unions as opposed to also creating the same protection for the employers and the individual employees. We're very concerned about that.

If we're going to have this purpose clause in Bill 40, as the government is indicating will be here and, unfortunately, we know that it probably will be at the end of the day, there's another concern I have. Because of the expanded role and power of the Ontario Labour Relations Board and the fact that it's going to play a much more



active role in future labour relations and collective bargaining, the composition of that board is now going to become very important. If it's going to be promoting the interests of unions in advance of those of individuals and employees, we certainly have to ensure that the composition is as neutral and balanced as possible.

In conclusion, I would just indicate that I believe that all references to improving productivity, as are suggested here, workplace training, are management issues. I really strongly believe that they should not be the mandate of the Ontario Labour Relations Board, which is a third party which is or should be totally uninvolved in management issues or workplace issues. I'm certainly concerned that that's included in this act.

If we are fortunate to defeat this section, we have some alternatives which we feel would be more responsive to the views of all Ontarians in this province, and I hope that I will have an opportunity to speak to that.

**Mr Steven Offer (Mississauga North):** I was listening closely to the points made by Ms Witmer in this matter. It was, I think, last Thursday when I spoke on and against this particular aspect of the amendment by the government. I hope the members of the government side were listening to the concerns brought forward on this amendment, because if they were listening to this, then I'm hopeful that they too will defeat this section. Shortly we'll find out.

I think there were four points which I jotted down as Ms Witmer was speaking.

She spoke about the purpose clause and the example of other purpose clauses in other pieces of legislation. I think there's an important point that has been brought forward, and that is that where a purpose clause does exist in other forms of legislation, the wording of the purpose clause is much like the preamble in this bill. It is not specific. It is used as a matter of setting out some general principles, some guiding directions, but does not carry with it the particularity as exists in the purpose as suggested by the government in Bill 40. I cannot but be extremely worried that this is going to cause major difficulties in the future. I cannot speak with certainty or definitiveness as to where and when, but I believe that when you put something like a purpose clause in a piece of legislation and attach to the purpose clause something more than general principles, general directions, you may unwittingly be hurting the groups, associations, individuals that you are hoping to protect. I think there is ample example of that taking place.

1600

It is clear that the purpose clause does shift the balance in the board. It is clear that the strength of our labour relations and the strength of the message that has gone forth in our labour relations in this province is that the board is an impartial adjudicator; that when there are matters which come before the board under the legislation, the board is there to listen, to weigh the arguments, to deal with the sections under the act which it is charged with and to decide. I believe there is a certain confidence that the board will do that, has done that and that the act and the preamble have allowed the board to act impartially.

But now we are imposing—and this is nothing less than an imposition on the Ontario Labour Relations Board—that in any matter that comes before it, it must be not guided but dictated to to make certain that certain areas are taken. The concern is that there's now a shift in the board from one that was an impartial adjudicator to one which must favour organized labour.

The question is: Should the adjudicator, should the referee operating under the legislation, favour one side or the other on any matter that comes before it or should it listen to the arguments, weigh the arguments, look at the section under which the action is taken and act accordingly? I believe that there are many people who hope that's the way the board operates. I believe that this purpose clause now takes away from that operation.

The next two points that I want to make—and I must say on record it was prompted by the comments by Ms Witmer. We speak to the purposes of the act, and it says, "To encourage the process of collective bargaining so as to enhance the ability of employees to negotiate" terms and conditions of employment with their employer.

We have to look very carefully at this. What does it mean, "to enhance the ability of employees to negotiate... terms and conditions of employment" with their employer? I can see the argument made, but is it now possible that the enhancement of an employee's ability to negotiate terms and conditions of employment with his employer would allow the board to order, on argument, that financial statements or other matters within the privilege and confidence of the employer must now be made public because it is only those documents, financial statements or other, that can give meaning to enhancing the ability of employees to negotiate terms and conditions of employment with their employer.

I am going to be and am asking a question of the parliamentary assistant and ministry officials. I believe it is absolutely essential that the public record indicate the response to that question. I am not limiting it to financial statements; I am indicating not just financial statements. I note that during the public hearing process, many times we were focused in on the purpose clause and could that be used as an argument for providing financial statements, but I am also aware that there are a variety of other documents that an employer might have that could be important and useful in negotiating terms and conditions of employment.

I'll give you an example. An employer entering into a contract with another firm for the provision of supplies, and in return, dollars: That may be a confidential record; the terms and conditions of that contract may be confidential. It could be argued, I believe, under this purpose clause when the employees of that same company say, "Listen, our terms and conditions should be improved and the only way we can prove that is for the employer to provide information on all contracts the employer has entered into with others," and only by knowing that, in terms of the purpose clause, will that enhance the ability of employees to negotiate terms and conditions of employment with their employer.

So I do not limit this just to financial statements. I believe it must and might very well be expanded. You

don't need just to look at the financial statements; you can look at the whole structure of companies and company contracts during the year and in the previous year. We need a definitive statement by the ministry that this cannot under any circumstances, as far as the board is concerned, be allowed nor will it be allowed. If there is anything less than a categorical statement, then I fear the ramifications. I'm sure that you've made note of that.

The second point, while we're on it, is in the first purpose, "To ensure that workers can freely exercise the right to organize by protecting"—I believe that is what the government has indicated—"the right of employees to choose, join and be represented by a trade union of their choice."

I want to hear again from the ministry officials that not only that purpose but indeed anything within that purpose clause would preclude the board from ordering that membership lists be provided. I know that's another area we dealt with during the hearings and the problem we have now is that the government seeks to change an aspect of the purpose clause and we are left without being able to look at the impact those changes will have.

I believe, just so I can put my own opinion on the table, that the purpose clause and the wording of the purpose clause and the fact that it is much more than general principles will now permit, on application, a labour relations board to order the provision of employees lists. I believe what we need is a categorical statement that this cannot and will not be permitted. We have heard arguments on employees lists throughout our hearings. I keep on referring to membership lists, but I think everyone understands I am talking about lists of employees in an establishment. In fairness, we heard those in favour, that lists should be provided, and those opposed, that they should not be, and the reasons are, for one, that it would facilitate organization, and on the other side, that it is a problem with confidentiality.

Notwithstanding that, we have to make certain that there cannot be an argument posed by an individual or group or association to the Ontario Labour Relations Board which, using the purpose clause, might order the provision of employees lists. It is something I and my colleagues have brought forward time and again. I have said over and over again that I am concerned about the provision of employees lists.

1610

**Ms Sharon Murdock (Sudbury):** At what point in the organizing process are you asking that? When would that occur? At what point in the organizing process?

**Mr Offer:** The parliamentary assistant asked at what point. It would seem to me that there isn't necessarily a specific point in time. I am concerned that any organizing group could say: "We want employees lists. We have commenced an organizing drive. It is too difficult. We cannot ascertain who the employees of the association or company are and we now have"—to the members of the board—"a purpose clause which says that 'workers can freely exercise the right to organize by protecting the right of employees to choose, join and be represented by a trade union.'"

The argument would then proceed: "Workers cannot be given that assurance in the purpose clause when we as the organizers cannot approach them, and we cannot approach them because we do not know who they are and the only way we can know who they are is if the company provides an employees list."

I believe that argument can and will be made. In the past, arguments such as that have been made. What has been the difference? The difference has been that there has not been a purpose clause in existence. There have not been these words that appear on this piece of paper, that the particularity is much more than broad principles.

What do we say when that happens? What is the impact of that? What rights, protections and indeed freedoms do the employees of this province have if we cannot today categorically indicate from the Ministry of Labour of this province that this cannot and will never take place?

Of course, if the government wished to allow for the provision of employees lists, it could do that by way of amendment, but we cannot as legislators allow such an important issue to be decided outside the Legislature where the rights of individuals are at stake. We have an obligation to categorically ascertain from the Ministry of Labour that this can never happen and will never happen.

We know that public records, as this Hansard will be, may be used. Actually, I'm not absolutely certain that it can be used, except in constitutional cases. I wouldn't mind actually getting a clarification on that, because it would heighten—

**The Vice-Chair (Mr Bob Huget):** Your first thought might have been close to correct, do you think?

**Mr Offer:** I'm worried. I'm now doubly worried, because I don't know if even what we say here today could be used as showing intent on the part of the Legislature. I just bring it forward. I think there is some sort of a bar to using these types of Hansard notes in any definitive way, unless it is a matter of constitutional validity. I might want to hear from the ministry officials if that is the case.

To summarize my question on financial statements, but not just limited to financial statements, secondly, the provision of employee lists, hopefully, as Ms Witmer has indicated, the government members may very well see the light—

**Mr Randy R. Hope (Chatham-Kent):** We saw it a long time ago; that's why we made the changes.

**Mr Offer:** —and recognize that a purpose clause with the particularity of this is a threat to those who fall within the act. I know that Ms Witmer had also asked some questions which I too am looking forward to a response to.

**Ms Murdock:** It was the same question, I believe, that you asked, only much shorter.

I'm going to have Tony Dean answer the question on financial statements, but in terms of the employee lists provision, I think it's pretty clear, from the discussion paper to the amendments, that we certainly have thrown that out because it was definitely in the discussion paper as a possibility. It's evident that it is not in the amendments and therefore our intent was not to include it, and I think we made that fairly clear.



In terms of interpreting by the board, that is for it to do; it is not for us to do. I, personally, looking at that, know that obviously, Mr Offer, you have interpreted as a possibility that the board could be asked by a union to provide employee lists now, and you mentioned also that it has already occurred under the existing act. That is true, but it has always been post-application, it is my understanding. As it stands right now, on post-application by a union for certification, the employee lists, once provided by the employer, can be provided by the board right now under the existing legislation. These amendments aren't going to change that on post-applications.

I think your concern, at least from my understanding of what you said, is prior to an application, and as categorically as I can, I would not read that into paragraph 1 of section 2.1. In terms of the financial statements, I'll defer to Tony.

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**Mr Offer:** Before the financial statements, may I just ask a question to follow that? I am sure that this issue has long been debated within the walls of the Ministry of Labour. It's part of your consultation paper, the employee list. I would find it surprising that as these discussions and deliberations took place, probably along some long table with not many people around, that the issue of employee lists, past arguments made to the board, and folding in the new purpose clause have not been discussed. I don't know, but I find it surprising that this issue would not have been fully canvassed with a view to determining whether, first, the argument can be made. I think the parliamentary assistant is absolutely correct when she indicates that anybody can make any argument about anything and there's nothing that you can say about that; I think that's absolutely right. But there is something else which hasn't been addressed in your response, and that is, what is the potential for that argument to be made? And second, if that argument is made with this purpose clause in effect, what is the likelihood that lists will be so ordered?

I would think that for ministry officials to embark on that type of discussion is totally responsible. I'm not opposed to that; I think it's totally responsible for them to take a look at what might happen. The question is, as you must have done that, what has been—if you can share with us—the final deliberations in terms of these potential applications with this purpose clause and the likelihood that the board will in fact order lists to be provided? You're not telling me you haven't discussed this.

**Ms Murdock:** That's why I asked you the question, at what stage of the organizing? Obviously, once a union has applied for certification, at that point the employer usually provides employee lists to the board. Prior to that, the board would not have any employee lists, obviously, because it doesn't even know a union is trying to organize until it's notified of the organizing. The board would not know that until the union had applied to certify, so I truthfully don't see what your concern is, but maybe Jerry Kovacs can add something to it.

**Mr Jerry Kovacs:** Mr Offer, there isn't any way the ministry is able to predict how the labour board might

interpret any of the provisions. It was the ministry's job and the ministry's attempt to provide wording which accurately represented the intent of the government in restating the objects of the act more clearly than they were already stated in the preamble. It remains not in the hands or in the capabilities of the ministry to predict how the labour board will interpret this.

It is because the government would prefer that the labour board have some further statement of the government's intent that the purpose clause is as extensive as it is. It's probably already more extensive than other purpose clauses you have proposed in your alternative motions. For it to be any more responsive to your particular question would mean that it would probably have to be a much lengthier purpose clause than is workable within a statute. It's a very particular question. It was a very particular issue raised in the discussion paper and it was a very particular item that was dropped from the matters contained in the bill that is before the committee now.

**Mr Offer:** But surely the government is expecting that argument to be made based on this purpose clause. I can't imagine that the government is not expecting the argument to be made on the basis of the new purpose clause. I understand all you have said, but surely we are anticipating applications for lists to come forward, because now they have these words, extensive as you've indicated, dealing with the purposes of the act, which do not exist now; we now have principles. The government has deleted, repealed, the preamble to the act, has repealed the guiding principles of the act and replaced them with this mechanical aberration, the ramifications of which are totally unanticipated.

**Mr Hope:** Where are the words you're saying that interpret—

**Mr Offer:** Pardon me?

**Mr Hope:** You're making innuendoes. What wording exactly specifies that which you're making allegations about?

**Mr Offer:** Mr Hope has asked, where is the wording? As I indicated, I have maintained that where it says, "The following are the purposes of this act: 1. To ensure that workers can freely exercise the right to organize by"—and the government has taken out the word "facilitating" and inserted the word "protecting"—"protecting the right of employees to choose," the argument can be made to the board that to give real substance to that purpose can only take place if the organizers know who those employees are. Mr Hope shakes his head, but the fact of the matter is, there it is.

**The Vice-Chair:** Mr Offer, do you have a further question? Mr Dean is ready to respond to your previous question.

**Mr Tony Dean:** I'll start by stating again that within the policy process, in terms of considering Bill 40, very careful attention was given to the issues of lists and the provision of financial and other sorts of information. The ministry consulted heavily on both those issues. A number of representations were made, concerns were raised and both were explicitly dropped.

The business community then shifted its attention to the purpose clause. The same concerns were raised but this

time in the context of the purpose clause, and in particular two phrases were referred to. With respect to your concern, Mr Offer, reference to "facilitating" that right was, as I think a business spokesperson referred to it several days ago, one of the lightning rods. The concern was raised that reference to facilitating that right "to choose, join and be represented" and improving "terms and conditions of employment" could still lead conceivably to some of those results, the provision of lists.

So in a further attempt to address that concern, the reference to "facilitating" was replaced with the reference to "protecting," because it was considered to be less active, less encouraging. To the extent that those amendments or changes were made, I think it's certainly our feeling that the predominant concerns raised by employers were addressed.

As to whether the argument conceivably might still be made under the purpose clause or any other provision of the act that access to lists should be made available or that certain kinds of information should be available, yes, it is conceivable, but it's considerably less likely that those arguments will be successful based on the amended language and the amendments to Bill 40.

**Mrs Witmer:** I had a question. I certainly share the additional concerns Mr Offer has raised. I think by introducing the changes in the purpose clause and new concepts, it becomes very obvious that there's a real uncertain environment that's being created. Obviously, it's going to be left up to the labour relations board to interpret some of the new changes within the purpose clause. I'd like to know, however, what does the word "protecting" mean that is different from "facilitating"? Why would you not use words like "allowing" or "recognizing"? We are basically talking about the right of an individual to join a union. Why would we be protecting the individual who wants to join a union and not offering equal protection to the individual who wishes to remain non-unionized? What does "protecting" mean that's different from "facilitating" and is different from "allowing" or "recognizing"?

1630

**Ms Murdock:** Obviously, we initially liked the word "facilitating"—that's why we used it—but in the hearings I think it became fairly clear, particularly from the business groups, that the word "facilitating" was quite fearful for them in that it meant making it easier to unionize, that that's facilitating. So we removed it and used the word "protect."

There was a lot of discussion on which word to use, but given that the Ontario Labour Relations Act represents workers who are unionized or who have a collective agreement or are in the process of trying to get one, you are maintaining or protecting whatever it is they have within their collective agreement or within that bargaining process, so that's "protect." It doesn't increase, which was the fear of business, what was already in that agreement.

**Mrs Witmer:** Personally, I don't think there's much difference between the words "facilitate" and "protect." I still think this purpose clause favours unions as opposed to individual employees and employers.

**Mr Len Wood (Cochrane North):** Working men and women.

**Mrs Witmer:** Regardless, I believe very strongly that this document, Bill 40, is not responsive to the needs of individuals. I think it infringes on individual rights and freedoms. I think it is in response to the demands of the union leaders, just like Bill 80. I've become aware of some of the political background to that particular bill as well, which is really quite interesting. We now have another group of individuals who don't feel that the consultation program has taken place.

**Mr Bob Huget (Sarnia):** May we return to discussing Bill 40, section 5? Bill 80 is another piece of legislation.

**The Chair:** Is that what you were discussing, Ms Witmer? Thank you, go ahead.

**Mrs Witmer:** I'm discussing Bill 40 and simply giving another example of a bill where consultation did not take place with all workers and members of unions. Maybe it did with the union leadership, but I want to express my same concern around Bill 40. I'm concerned about the word "protecting." Unions are protected, but I don't think the worker who doesn't want to become unionized is.

So I don't see any substantive difference between "facilitating" and "protecting." I think this entire purpose clause creates an uneasy environment in the workplace and certainly is not going to achieve the harmony and the cooperation we're looking for. I don't see much of an improvement. I think the government is well aware of the implications of what can happen using the word "protecting." I think all the things Mr Offer has expressed some fear that can happen will indeed happen.

**Mr Hope:** We didn't want to get too much into comment on that, but when we talk about "protection" in the purpose clause, one of the things that has to be understood is that you're talking about a group of individuals who wish to associate with an organization that will represent their interests. What you have to do is focus the intention of protecting those individuals, the current status in their workplaces, and providing that.

The allegation is that it's protecting the union. Well, the trade union that will be formed eventually will be those workers who are looking for an association. It's not a big union name coming in; it's workers who work in that workplace. Some of us would like to see it strengthened more to put those protections in place for those workers who want to make the choice of a collective right that has never been pursued in a workplace before.

With the allegations of pro-union, that is the mentality and the mindset of individuals who wish to attack the legislation. One of the emphases has to be that you're talking about a group of workers or a worker who wishes to pursue a right to a collective organization that will represent their or his best interests. I think the purpose in the legislation has to be to protect the current existence of that employee in that workplace. I believe this purpose clause is one part of the legislation that allows it.

As to the seniority list, I know everybody would like to have those things, but unfortunately half the time they're not even prepared appropriately.

**Mr Offer:** There are two areas I want to bring forward. The first would be by question to the parliamentary



assistant. You've heard my concerns about how the purpose clause may be used to result in the provision of employee lists, and you've also heard my concerns that the purpose clause may be used to facilitate the provision of confidential documents of an employer.

My question to you is, in order to lessen my concern, is the government prepared to introduce an amendment to this bill which would categorically indicate that membership lists, notwithstanding any of the wording of the legislation, cannot be provided? Would they be prepared to bring forward and support an amendment which would give some lessening of my concern in the area of confidential documentation and financial statements? If you're able to do that, then I must say my concerns are lessened. If you're not, my concerns are far from it; they're heightened.

**The Chair:** Mr Hope, did you have anything more to add to that?

**Ms Murdock:** No, his was a question, Mr Chair.

**The Chair:** I understood that, and I was inquiring whether Mr Hope, having spoken to this, wants to supplement the question Mr Offer asked. If he doesn't, go ahead.

**Mr Hope:** I just thought the concerns weren't as good as mine, that's all.

**Ms Murdock:** The short answer to that is no, but the act is silent and it is left to the board to make any of its decisions as it is presently. So I do not share your concerns about the interpretations of any of the subsections you have mentioned. I believe that the board, in the past, in its experience and precedents and so on, has not shown itself to be capricious in making decisions as to what it's going to provide to either party. I don't imagine they're going to change that significantly in terms of how they, as human beings and thinkers, operate within the labour relations process. So the answer is no.

**Mr Offer:** My problem with your response, of course, apart from the obvious, that my concerns are heightened, is that when one looks at the decisions of the board, one assumes that the rules under which they are governed have not changed. Unfortunately, that is just not correct. The rules and principles under which the board has been governed in the past have been dramatically altered, and they have been so by way of the purpose clause. So I have that concern.

The next point I want to make is in response to the point brought forward by Mr Hope. I think it's a very important point. I don't want to be in any way misinterpreted. I think what Mr Hope has said in dealing with the rights of workers to choose to be represented by a union is something which we can all support. We have said this over and over again. The difficulty I have is that when I am talking and thinking of the rights of workers to choose and the freedom to exercise that choice, it may also entail not only the joining of a union and the participation in the lawful activities of the union, but also not joining a union.

My concern has always been that the worker be given the full range of freedom and the full range of choice. In this purpose clause it doesn't do that, and it is one which I believe will come back to haunt. We want the workers of this province to freely choose to be or not to be part of a

union, but they have to have that freedom, and this legislation—even the points brought forward by Mr Hope make the case. We certainly don't want to be misinterpreted as indicating that workers should not have that choice. Of course we want them to have that choice. We've said that from day one. But that also includes and must include the right of a worker to freely say no, and this purpose clause does not allow that for the workers.

1640

**The Chair:** Ms Witmer, then Mr Hope.

**Mrs Witmer:** I'd just like to respond to the point that was made by Mr Hope. I think we have to be abundantly clear what it is we're talking about.

I'm concerned that the purpose clause, as written in Bill 40, is not going to contribute to stable and productive collective bargaining. I think it's going to create confusion and some very unexpected consequences, consequences that both Mr Offer and I have alluded to today.

Now, if the government chooses to have a purpose clause, as they've indicated they're going to have, then I believe we need to be confining ourselves to the essentials of a labour relations statute. We need to give employees the freedom to join trade unions. In other words, we recognize the right of employees to join a trade union and to participate in its lawful activities without any improper interference. That right should be given to all employees, wherever they are. Why can that not be in the purpose clause? Why can it not be a simple statement saying exactly that: "To recognize the right of employees to join a trade union and to participate in its lawful activities without any improper interference"? Why do we have "To ensure that workers can freely exercise the right to organize by protecting the right of employees to choose, join and be represented by a trade union of their choice and to participate in the lawful activities of the trade union"? Why not short, sweet and simple, something that's not going to create confusion and any unexpected consequences?

I'm concerned that the present purpose clause then goes on to dictate some results, some expectations. Also, it's asking the board to experiment with some new concepts and to make some interpretations. I'm very concerned about that. But nowhere have I ever suggested that workers should not have the right to join the trade union of their choice and to participate in its lawful activities without any improper interference.

**Mr Hope:** I'm getting very confused here, because we're talking about the rights of individuals to freely choose whether to join a trade union or not to join a trade union. It's very hard for me to understand where a worker who does not choose to associate himself with a union is going to lose his job, whereas a worker who decides to form an association is now always faced with that decision that an employer always puts on them.

When I hear about the protection of individuals, the freedom and rights that they must have, I really have to question the knowledge of ever being involved in an organizing drive to understand where a worker who would like to associate himself with a trade union—or a plant association in itself; not necessarily a trade union but a plant

association—is victimized by the job being held over his head, but the person who doesn't choose to belong to or associate with an association never is victimized with them saying, "Well, would you like to have your paycheque next week?"

So what we have to do is focus on who the victims are. The victims are those who wish to organize. That's why you need to protect the rights of those individuals. I think the focus of the purpose clause has to be where it is and where the victims lie in the circumstances. But it's very difficult for me to understand when we're trying to put—and you can get all types of interpretations. I can see where Mr Offer's comes, because I heard during the avenues of this that it was his legal profession, but when you're looking at an individual who looks at this and says, "My rights of protection"—never mind interpretation; everybody can interpret whatever they read. But I think the intent is to make sure that people who are changing the work structure in a workplace—which the employer does not want, because if the employer wanted a trade union, the trade union would be there by automatic certification.

When workers are making changes in their workplace that are not pleasing to the employer, those workers who are making that change now become the ones who need protection. The first person who wishes not to associate is never threatened by the aspect of losing a job. I think that has to be put in perspective in order to understand the purpose preamble of this. But you never see a trade union say, "You will lose your job if you don't join a trade union." That threat is never put forward.

**Mr Offer:** With respect, when I hear those comments, it would just seem to me that you would have been supporting and supportive, and maybe you are.

**Mr Hope:** Don't interpret what I'm saying. I'll say what I'm saying; you say what you want to say.

**Mr Offer:** No. I prefaced my comments by saying, "When I hear what you have said." It would seem to me that you would have been supportive, and in fact when we get to the section, may be supportive of giving workers the freedom to choose.

**Mr Hope:** You can't.

**Mr Offer:** And you're saying you can't do that. You are saying that you can't, in this province of Ontario, give to workers the freedom to choose.

**Mr Hope:** You've got to put things in perspective when you're talking about the workers you wish to protect. Which workers are you wishing to protect when you talk about the protection of all workers? Out of all workers, who are the workers who are the most victimized workers of a workplace—the ones who are staying with the employer and not wanting to organize or the ones who are wishing to associate? Which of the two categories of workers are the victimized workers? Then you put things in perspective, Mr Offer, and maybe you'll start to understand where you have to put in the legislation a preamble that will protect the individuals you want to protect.

**Mr Offer:** The problem is when you say, "In the preamble." Your government has repealed the preamble.

**Mr Hope:** Excuse me, the purpose clause. I would like both of them in and make it much easier.

**The Chair:** Is that a motion?

**Mr Hope:** We've got to vote on this, and if it's voted down then it all goes in.

**Mr Offer:** However, I think it's an important point that you bring forward, because you have indicated that you do not believe that workers should be able to be given the right to choose and I believe that's exactly what Hansard will show. I'm not saying the government, Mr Hope, but I believe that's exactly what Hansard will show: that the right of workers to choose—

**Mr Hope:** You'd better read what Hansard said before you make out that that's what I said.

**Mr Offer:** All I'm saying is that I believe Hansard will show that you believe giving workers the right to choose will not work, and I believe protections can be built into legislation, I believe information can be given to the workers of this province so that they can make an informed choice, that they can be making a choice with full protection and that they can be casting their vote free of any thought of intimidation or coercion. I believe that that can be done.

It is interesting, and I will be so interested to hear the comments of Mr Hope when we get to that very important and critical section.

**The Chair:** Mr Offer, you indicated to me earlier that you might need some consultation.

**Mr Offer:** Yes, and I hope we deal with this part of the amendment and move on with the rest of the legislation. Prior to a vote, I would request a short five-minute recess.

**The Chair:** That's not unreasonable. We are adjourned for 10 minutes.

The committee recessed at 1649 and resumed at 1704.

**The Chair:** We're resumed. Any further debate? I'll put the question. All those in favour of Ms Murdock's motion amending the bill?

**Mr Offer:** I'd like a recorded vote on this.

**The Chair:** Recorded vote. Please raise your hand and keep it raised until your name is called.

The committee divided on Ms Murdock's motion, which was agreed to on the following vote:

#### Ayes—6

Hayes, Hope, Huget, Murdock (Sudbury), Ward (Brantford), Wood.

#### Nays—1

Offer.

**Mr Hope:** Mr Chair, I was just wondering, how come there's only—

**The Chair:** That's fine, Mr Hope. Okay. We'll move on to the next motion, which is a motion by Mr Offer.

Mr Offer moves that section 2.1 of the Labour Relations Act, as set out in section 5 of the bill, be struck out and the following substituted:



**"Purpose**

"2.1 It is the purpose of this act to further harmonious relationships and industrial peace between employers and employees by ensuring that workers can freely,

"(a) exercise the right to choose whether to organize and be represented by a trade union of their choice; and

"(b) exercise the right to participate in the lawful activities of the trade union."

In view of the motion of Ms Murdock that was just passed, that motion is out of order. I would be, and I think the committee would be, responsive or receptive to another motion, should Mr Offer want to bring it during the course of the balance of the eight days. In any event, that motion is out of order.

**Mr Offer:** Could I get some idea as to why that would be out of order?

**The Chair:** Do you want it on the record or do you want to talk to the clerk?

**Mr Offer:** I wish I would have known, because I would have asked during that five minutes.

**The Chair:** Yes, during that consultation. My apologies.

**Mr Offer:** I could have done that. I could have discussed that matter. I would hate to leave this matter. Could I ask for two minutes?

**The Chair:** Of course you can. We'll adjourn for two minutes.

The committee recessed at 1706 and resumed at 1709.

**The Chair:** We then have two motions by Ms Witmer, both of which are similarly out of order and would indicate to her that she may want to bring parallel motions to the committee in the near future.

Any amendments to section 6? No amendments to section 6. Any discussion surrounding section 6? Thank you.

We then move to section 7. Ms Witmer moves that subsection 7(1) of the bill be struck out. Ms Witmer?

**Mrs Witmer:** Speaking then to subsection 7(1) of the bill, the intent of this amendment is to prevent the combining of full- and part-time employees into a single bargaining unit.

There's been a great deal of concern expressed regarding this combination of the full- and part-time employees into a single bargaining unit. Some of the concerns are that it ignores the board's expertise in discerning a natural and inevitable schism in the interests of full- and part-time employees, it falsely assumes that a barrier to organizing exists in the act for part-time workers and it groups or separates the full- and part-time employees based on the union's degree of overall support, creating a scheme to facilitate certifications rather than focusing attention on protecting the wishes of the part-time employees.

This section would mean it would be possible for a union to submerge the interests of the part-time groups under the weight of the full-time majority. If the full-time employees make up the majority, the union could certify the entire group, even if none of the part-time employees were in support of the union and, personally, that takes away the freedom of choice entirely for the part-time employees.

As well, those part-time employees sometimes have very different interests and demands than the full-time employees.

I can give you an example of one workplace where you have a split. If we take a look at the Human Resources Professionals Association of Ontario, they have 50 employees. Thirty of their employees are full-time and 20 are part-time. Now, if 28 of the full-time employees join the union and none of the 20 part-time employees join, the part-time employees would still be represented by the union, even though they had unanimously opposed the union.

Personally, the Ontario PC party believes that's wrong, because those 20 part-time people would have been deprived of their opportunity to exercise their choice as to whether they want to join a union. Furthermore, the interests of the part-time employees could be overridden after the certification as well. The union could organize the two units separately and then, later on, ask the labour board to combine them if they represent both units with the same employer. At the present time they can do that, even if the part-time employees again are adamantly opposed.

I'm very concerned that Bill 40 does not advance the interests of the part-time workers and does not allow them the freedom of choice. What you have here is that automatic certification of a combined unit is directed, regardless of the majority wishes of each group, each group referring to the full- and the part-time employee groups.

Sometimes the board may know from the membership evidence before it that it has a majority, or even all of the part-time employees have not joined the applicant union, but is nevertheless directed to sweep them into the combined unit if the union has 55% overall support. If the union is not in such a position, the separate wishes of each group suddenly become relevant again, lest the board dismiss an application for certification that might be successful if the employees' wishes are considered separately.

If you take a look at the retail sector, many of the part-time employees are employed, oftentimes because of their choice, in a very short-term or casual way. Oftentimes they are women who prefer part-time work, want to spend some time at home with their family or prefer to work at certain times of the year, be it Christmas or other times, just to have that employment opportunity, or students who are looking for some part-time work.

Oftentimes the part-time employees do have very different interests. Often they view their jobs as very transitional. On the other hand, the majority of full-time employees are usually interested in pursuing a long-term career with their employer or with the sector they're involved in, and as you can see, oftentimes you do have two very distinct employee groups. I believe that the distinct employee interests should be addressed separately.

Also I'm concerned that under this section the employer has absolutely no role in the process and he or she has no opportunity whatsoever to make submissions on the issue of whether or not it's appropriate that there be this combination of the bargaining unit.

The other concern I do have is because the interests of part-time and full-time workers are often so different, and I certainly can relate to that myself. Again coming back to the retail sector, I know when I was a student, I was a

part-time employee, and certainly my interests were different from those of the people who were employed in the store on a full-time basis. Your interests are different. Part-time people may be required to strike over long-term benefits or issues that really do not apply to them, and under Bill 40, all people then would be prohibited from working during a strike.

My overall concern is that if you allow the amendment to go ahead as proposed by the government and you have this combination of the full- and part-time employees, you really are taking away the choice of the individuals within each unit to pursue their best interests. They can be placed in a position where although they haven't voted for the change, they will be forced to become part of the bargaining unit or the strike action, even though they don't feel that that group or that strike action adequately represents their views and their best interests. As such, I will then move this amendment which would prevent the combining of full- and part-time employees into a single bargaining unit.

**The Acting Chair (Mr Randy R. Hope):** Mr Offer, do you have a comment?

**Mr Offer:** Yes, I do. This is an area in which we heard a substantial amount of comment during our public hearings, and as I recall some of those submissions, there were those who thought that full-time workers did not have the so-called same community of interests as part-time workers, and I believe that has been the practice under the Labour Relations Act in the past, that there was what was called a community-of-interests argument which in essence prohibited the combination of full-time and part-time workers.

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What has happened, in my opinion, is that there has been a growth in the part-time service sector of our economy and where once that wasn't a significant aspect of the workforce, and I say "significant" in terms of numbers, that is no longer the case. It is very important and the numbers are growing. We have heard that because the numbers of workers in the part-time sector have grown, as they grow, the argument goes that the community-of-interests difference seems to be minimized until there is in fact no difference between part-time and full-time, that there is no need for a community-of-interests argument because the workers of a full-time and part-time nature share the same community of interests and hence should be able to be combined.

As I listen to the arguments and the comments—because they weren't arguments; they were comments—as to the realities of the workforce today, I certainly did understand where in some instances it may very well be that part-time workers feel they have the same interests as their full-time counterparts, or if they do not, they think they should. But it also holds that there are those who say: "It doesn't matter what our numbers are, we do not hold the same community of interests. The things that are of concern to us are not the same as in the full-time sector and it should not be for others to decide for us." I think that, to me, is the essential principle: Who is to decide?

This legislation says it is up to the board to make that decision based on a certain voting procedure. As members of this committee will know, I have brought forward on

numerous occasions my concerns that the voting mechanism, the percentages required, may in essence take away from the rights of workers, and this is the clear impact of this section. Rights of workers will be taken away if this section is passed in its current form. You will not be able to argue differently. The mathematics make the point. You cannot say that the rights of workers are protected if this section passes. We're probably going to deal with that in some detail.

The workforce has really gone through some real overhaul. I think we all recognize the massive unemployment and job loss that has taken place in the province of Ontario. I don't think there is an elected official in this country, at whatever level, who hasn't felt in his or her area of representation the impact of this recession, meeting with people who, for the very first time in their lives, are out of work, discussing with people how they can survive.

We know that a great deal of that job loss has taken place in the manufacturing sector. We know of that. We know of the unemployment rate, we know of the bankruptcies, we know of the closures, we know that no matter what the unemployment rate says the reality is that it's higher because the unemployment rate—

**Mr Pat Hayes (Essex-Kent):** That's why Peterson called the election.

**Mr Offer:** There are members who refer back to a time when there was expansion and creation of jobs in a previous government. I didn't bring this forward—Hansard will show that I did not bring this matter forward—but the point goes that in the mid-1980s there was expansion, there was creation of jobs, there was employment in all sectors. It was a time for young people who in many ways had their choice as to where they wished to choose a job, but now we are talking about today, Mr Hayes. We are talking about what people are feeling today. We are not talking about previous governments where there was job creation and investment and a positive climate. We're talking about today.

**The Acting Chair:** We are talking about subsection 7(1), are we not?

**Mr Offer:** Yes, we are, and that's what I was talking about. Mr Hayes brought forward the issue and I feel compelled to respond whenever there is a comment.

As I indicated, as elected officials we've met with and spoken to the people who are not employed. We know, as I was indicating earlier, that the unemployment rate, though high in its percentage itself, is in reality higher. It does not take into account those many people who have given up, who are no longer looking for work and who are not factored into that unemployment rate. We know that the unemployment rate in itself is incredibly high. The reality is that it is actually higher.

We also know that in this province a great many of those jobs, though not all, have come from our manufacturing sector. Many people who have given many good years of their lives to working for companies now find themselves unemployed because the companies have either closed down or no longer can remain in existence. We also know that it is not just the manufacturing sector



that makes up our economy in terms of employment; there is also the service sector and that's what I was leading to.

The service sector, though, of course has suffered greatly by this recession, however we wish to call it. We can call it a recession, we can call it restructuring, we can call it the new era of competitiveness, but I know that for all of us, when we meet people, it's people who are out of work and who want to work. What has happened in the service sector? In the service sector we have seen a change. Where it used to be, as I will refer to it, the permanent full-time position, it has now been shifted to a permanent part-time position.

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What does that mean to those people who have jobs? They firstly want security, which I think we all understand. They want to have fair and good working conditions, which I think we all understand. They want to have a job with a degree of security, that the job they go to work to today is going to be there tomorrow, and I think we all understand that. They recognize and work beside people who are of the more traditional full-time status.

Do the part-time workers have the same community of interests as the full-time workers? Some would say yes, and some government members have shaken their heads in the affirmative, and my response is, maybe so. Are there some part-time workers who do not have the same community of interests as their full-time counterparts? I think the answer is the same, maybe yes.

Maybe it is up to the worker to make that decision himself or herself. Maybe it is up to the worker to decide, in his or her workplace, not in this committee room, far from this committee room, in the workplace of the full-time—

**Mr Wood:** Too many maybes.

**Mr Offer:** Mr Wood says there are too many maybes. I understand that. In fact, in many ways I somewhat agree with that, because as I listened to the people coming before, that's what came to me. It said, "We cannot say in this committee room that all full-time workers and part-time workers, in whatever establishment, all have the same interests." I'm not going to use the words "community of interests"—the same interests. We cannot say that. We can say that they may, just as we can say they may not, but the essential point is, who are we to decide?

It would seem to me that what we should do is put in place the framework so that those workers can make the decision. For some workers, the single-most interest is going to be their pay. For others, it is not just the salary but also benefits. For others, it may be a variety of other items. The point I make is that in this committee we cannot make that decision for the workers of the province of Ontario. All we can do is set in legislation, in legislative form, the opportunity for the workers to make that decision.

Let us not say categorically or, forgive me, mathematically, as appears in this legislation, that the workers' right to make that decision will not be honoured. This legislation absolutely says that. We're going to discuss that matter, and I certainly have some amendments to this issue, but it was absolutely clear to me, as we were dealing with the legislation, that as many people said there were similar

interests, so there were those who said there are different interests.

I plead with the members of this committee to listen to that, because it is not for us to decide whether, in all cases, each part-time/full-time worker has the same or different interests. It is up to us to put in legislation the opportunity for them, who know their own workplace, who know their own interests, to make that decision.

We're going to be dealing with this area at some great length, because I fervently believe that this section is a clear example of where the rights of workers have been eroded. I have said during the deliberations that Bill 40 in many ways takes away rights from workers. I recognize that the government and government members have argued against that, but I believe that the point is surely made in this section and others that will follow.

If I understand the amendment by the Progressive Conservatives, it is that all of subsection 7(1) be struck out. I further understand that to mean that in no circumstance can a part-time or a full-time workforce unit be combined. If that is the intent of that amendment, I cannot support that.

**Mrs Witmer:** No, that's not the intent.

**Mr Offer:** Oh, I'm sorry. Could I ask for a clarification then?

**Ms Murdock:** It isn't my motion; it's the PCs'.

**Mr Offer:** No, it's not a government motion, but that's how I understood the section.

**The Chair:** Go ahead, Mrs Witmer.

**Mrs Witmer:** The intent is that employees, whether full-time or part-time, could still be considered by the board to be appropriate for being placed in a single bargaining unit, but it would return the choice. Also, it would force the board to consider the facts of a particular case and to take a look at whether there is a community of interest existing between the two groups. So instead of "deemed by the board to be a unit" if appropriate, I would like it to read that the board may consider whether or not it's appropriate.

**Mr Hope:** Hopefully, that clarifies it for you.

**Mr Offer:** Yes, it does. Members of the committee will recognize that these clause-by-clause analyses of bills become very complicated, and it's magic, in many ways, to discuss the numbering.

Having heard Ms Witmer, it is clear that what the amendment really does is take away the power of the board to combine. If that is the case, I think we can see why such an amendment is necessary. In fact, the amendment I will be moving later on not only takes that away but also puts something in its place. The issue of putting something in its place is very important; if you take away the power of the board to combine part-time and full-time units, I believe there is a countervailing responsibility to substitute something in its place. The reason I say that is because I believe there are, without question, incidents and examples where the part-time/full-time worker units should be combined, will be combined. But when I say "when," to me the important point is when the workers in each of those units want that to take place.

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I do not want to leave that decision to the board. I do not want to leave it to the board on the basis of some mathematical equation which can very easily strip the rights of workers who do not want to be combined in one unit. This is a section which is critically important.

Members may question why I brought forward the unemployment rate and the loss in the manufacturing sector and the service sector, and the change from what was traditionally, in the service sector, full-time to one which is now part-time. It is important because there has been a movement from the traditional full-time worker in the service sector to the permanent part-time worker in the service sector.

Many examples have come before the committee. We know of incidents, both personal and not, which substantiate this. Anyone who walks outside this Legislature will recognize that it just happens to be a movement that is happening. It would seem to me that if that is happening—and it is—and if there are the growing two forms of workers, full-time and part-time, and if, on occasion, those units of workers wish to be combined, then there should be a mechanism to allow that to happen. If on occasion, after application, it is the wish of one of those sectors not to be combined, then that also should be respected.

This bill does not do that. It does not respect the rights of workers to not be combined if they wish not to be combined. I hate to talk in the negative, but it is absolutely clear that under this bill, if there is a unit of part-time workers who do not want to be combined with their full-time counterparts, but the numbers in the full-time unit are sufficiently higher than in the part-time unit, then on a vote they will be, shall be, must be combined, even though the part-time unit does not want to be combined.

This is nothing else than the taking away of rights. It is nothing else than subrogating the rights of one to the rights of the other. It is absolutely unnecessary, because it is not for us in this committee room to work on the basis and on the principle that all workers of part-time and full-time have the same community of interests. That's what this section is doing. It starts with a principle—no, it's not written, but it starts with the unwritten principle that the interests of full-time workers and part-time workers are the same. That's the unwritten principle because—

**Mr Hope:** Where's that?

**Mr Offer:** As I indicated, it's the unwritten principle, so don't look too hard.

**Mr Hope:** I thought maybe I had to put on my glasses, because I couldn't see where it's written.

**Mr Offer:** I say this because when one recognizes that that is the unwritten principle, then one can see why the sections and mathematics read as they do. If one accepts that principle, then one would not be that concerned about subverting, subrogating, the rights of part-time workers in this case.

I do not agree with that unwritten principle. I believe that in some instances the workers in the workforce do share the same interests, not because I think they do or I think they should or someone else has said he thinks the

workers do, but because the workers in the workplace think they do. To me, that should be the guiding principle. To me, the guiding principle should be, what is it that the workers believe?

This section puts that aside. This section works on the unwritten principle that it is in the interests of all workers that they have the same interests. That would be just not listening to the submissions that came before the committee. I don't know how many times one will have to say this, but let that choice be the choice of the workers. If part-time workers in a workplace believe they have the same interests as the full-time, then I say well and good; it's good enough for me. However, if part-time workers feel they do not have the same interests as full-time workers, I am ready to accept that as an equally important principle. This legislation casts that part aside.

Having asked for clarification on subsection 7(1) from the Conservative critic, I recognize that the intent of the amendment is much the same as the one which I am going to be moving, but I want to not only strike out subsection 7(1) of the bill but also replace it with a principle that says it is the right of workers to decide whether they do or do not carry the same interests full-time to part-time or vice versa.

So I will be supportive of this motion. It opens the door to what I think will be some important discussion and it opens the door for us to see in a very real way whether the government is ready to give true meaning to the principle of the right of workers to choose for themselves. Let us not use this room and this bill to dictate to workers what their principle should be. It is for them to decide, it is their choice, so I will be supportive of the motion put forward by Ms Witmer.

**Mrs Witmer:** I think I should clarify the motion.

**Mr Offer:** Then I'll have second thoughts.

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**Mrs Witmer:** For the sake of clarification, in bringing forward these amendments we have tried to respond to the views expressed during the public hearings. In our first attempt to make changes to section 7, we actually are indicating here that this would prevent the combining of full- and part-time employees into a single bargaining unit. Later on, if the government votes against the motion, then we are suggesting another alternative because, as I say, we've tried to be as responsive as possible. We would then be indicating that we believe a bargaining unit consisting of full-time employees and part-time employees in a single unit may be considered by the board to be appropriate for collective bargaining. That takes away this "shall be deemed by the board" and does allow some choice.

So just for the sake of clarification, in response to demands from presenters this summer, we are responding initially to the request to prevent the combining of full- and part-time employees into a single bargaining unit. So, Mr Offer, you can later support me when I bring forward my alternative.

**Ms Murdock:** I think I should be allowed to address the PC motion at some point in time.

**Mr Offer:** We want to get on with the bill.



**Ms Murdock:** I'm glad to see that Mr Offer wants to get on with the bill because I noted during his commentary that he has already spoken to his own motion, so perhaps now that he's done that we will be able to kill two birds with one stone.

Just quickly, the Progressive Conservatives are asking that he be struck out—we're not supporting that obviously—but it means then that the present practice of the board would remain in place, and the present practice of the board is to not combine bargaining units, either full-time or part-time, and yet in every jurisdiction in Canada, and we doublechecked this, that is not the case. The exact opposite is the case.

The concerns that were stated by Mrs Witmer I don't think would be addressed by maintaining the present practice of the board, and I believe too that, yes, there's no question the present practice is that full-timers and part-timers are treated differently.

Having said that, when you think about nurses, for instance, if you're a patient in the hospital, you don't care whether they're full-time or part-time, the requirements of their duties and their tasks are the same. If you go in to purchase a jogging suit, the retail person who is serving you has the same duties. Likewise at a bank, those people who work there and are serving you have the same kinds of duties and responsibilities.

The community of interests, certainly in terms of job skills, is the same, and it is given that Ontario is the only one out sync, in terms of looking at full-time/part-time workers, with the rest of this country. What we are going to be proposing when you get to ours will resolve that, and the present motion before us does not do that. So we will not be supporting you, Mrs Witmer.

**Mr Offer:** I want to respond to this because, as you will remember, I asked for the meaning of subsection 7(1), and the way I read the motion by the Progressive Conservatives was that in essence the status quo would be retained, and the practice of the board has been that because of a community-of-interests argument in essence full-time and part-time units are not combined. I had indicated I could not support that if that be the intent of the amendment.

I could not support it, but I think it's important for me to indicate briefly why not, because I believe—

**Mrs Witmer:** We're not going to get finished, Steve. We've only got five days left.

**Mr Offer:** —that it should be up to the workers to make that decision, and that principle is not respected in the Progressive Conservative motion. My motion, which will come forward later on, will deal not only with the rights of workers to choose but also to do so in a way which respects their rights, and so I will not be supporting that motion.

**The Vice-Chair:** All those in favour of Ms Witmer's motion, please indicate. Those opposed? The motion is defeated.

**Mrs Witmer:** I'm going to withdraw the motion to subsection 7(1) of the bill, subsection 6(2.2) of the act.

**The Vice-Chair:** That's identified as PC motion, alternate 2. Is that correct?

**Mrs Witmer:** Yes, it is. I would like to withdraw that motion.

**The Vice-Chair:** It's withdrawn.

**Mrs Witmer:** I move that subsections 6(2.1) to (2.4) of the act, as set out in subsection 7(1) of the bill, be struck out and the following substituted:

"Full-time and part-time employees

"(2.1) A bargaining unit consisting of full-time employees and part-time employees in a single unit may be considered by the board to be appropriate for collective bargaining."

Whereas the bill now says, "A bargaining unit consisting of full-time employees and part-time employees shall be deemed by the board to be a unit of employees appropriate for collective bargaining," we have said that it may be considered, whereas formerly the wording in Bill 40 does not permit the board to consider the facts of a particular case or to determine whether there is indeed a community of interest existing between the two groups of employees.

As well as disregarding the traditional elements of appropriateness, this amendment I am suggesting enables the board to consider the facts of a particular case and determine whether indeed there is a community of interests existing between the two groups of employees. It does allow for employee choice. It is deleting the subsections which would require the board to combine full- and part-time employees into a single bargaining unit and it really adds a new requirement to section 6 of the act.

Section 6 empowers the board to determine the appropriateness of bargaining units. The amendment maintains the board's jurisprudence over determining whether it is appropriate to combine full-time and part-time employees into a single bargaining unit for collective bargaining.

We feel that this amendment would appropriately take all of the relevant factors into consideration and also allow the employees themselves to have input into the decision as to whether or not they would be part of the full-time and part-time unit or whether they wished to be represented in an individual manner.

**The Chair:** Ms Witmer, of course you have no restrictions on the amount of time available to you to address your motion, but we're just shy of 6 o'clock and there was a matter that Mr Huget had to deal with, so with your permission, Mr Huget.

**Mr Huget:** I'd like to advise the committee that due to Yom Kippur this committee will not be sitting Tuesday, October 6, and Wednesday, October 7. I'd also like to advise the committee that the long-term policy for religious holidays will be referred to the standing committee on the Legislative Assembly and also make note that the request was in response to the opposition House leaders' request.

**Mrs Witmer:** I have just one question. Would it be the intent then of the government to take the two following days? We're still going to do eight days?

**Mr Huget:** That's correct.

**Mrs Witmer:** However—

**The Chair:** We're going to deal with this for eight consecutive days that are available to us, as I understand it.

**Mrs Witmer:** That's right. That means—

**Mr Huget:** There is no change in the eight days. We are resuming on Thursday.

**Mrs Witmer:** So we'll be doing it October 15 and October 19?

**Ms Murdock:** October 13, unless the House is not sitting.

**Mrs Witmer:** No, no. We were going to do that anyway. We were going to be finished October 14, but I'm assuming then we will also do this October 15 and October 19.

**Ms Murdock:** Yes.

**Mr Huget:** We need to do eight consecutive days.

**Mrs Witmer:** That's right.

**Mr Huget:** That's what we're proceeding to do. So Thursday will be day four.

**Mrs Witmer:** Right.

**Mr Offer:** I think it's clear that this is in response to a point of privilege which I brought forward today and I think that it was and is important that this committee earlier on—I believe on September 1, after some deliberation—unanimously voted for the House leaders to look at this matter. I think we should recognize that was an important part of the argument I was making. I was always hopeful that maybe it wouldn't have been required to be done in the Legislature, but there's no question that the resources committee unanimously had endorsed a request to be made and I think that's an important aspect for this change.

**The Chair:** You initiated that position by the committee and you did it with discretion and diplomacy and the committee's grateful to you for that.

We are adjourned until Thursday at 3:30 or the end of routine proceedings.

The committee adjourned at 1800.











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- \* **Vice-Chair / Vice-Président:** Huget, Bob (Sarnia ND)
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- \* Wood, Len (Cochrane North/-Nord ND)

#### **Substitutions / Membres remplaçants:**

- \* Hayes, Pat (Essex-Kent ND) for Mr Klopp
- \* Hope, Randy R. (Chatham-Kent ND) for Mr Dadamo
- \* Ward, Brad (Brantford ND) for Mr Waters
- \* Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan

\*In attendance / présents

#### **Also taking part / Autres participants et participantes:**

Dean, Tony, administrator, office of collective bargaining information, Ministry of Labour  
Kovacs, Jerry, legal counsel, Ministry of Labour

**Clerk pro tem / Greffier par intérim:** Decker, Todd

#### **Staff / Personnel:**

Anderson, Anne, research officer, Legislative Research Service  
Spakowski, Mark, legislative counsel





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## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 8 October 1992

# Journal des débats (Hansard)

Jeudi 8 octobre 1992

## Standing committee on resources development

Labour Relations and  
Employment Statute Law  
Amendment Act, 1992

## Comité permanent du développement des ressources

Loi de 1992 modifiant des lois  
en ce qui a trait aux relations  
de travail et à l'emploi

Chair: Peter Kormos  
Clerk pro tem: Todd Decker

Président : Peter Kormos  
Greffier par intérim : Todd Decker

Published by the Legislative Assembly of Ontario  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 8 October 1992

The committee met at 1533 in committee room 1.

### LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992

#### LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

**The Chair (Peter Kormos):** I call the meeting to order. I have some substitutions. George Dadamo is substituting for Randy Hope and it's signed by Shirley Coppen, MPP; not just Shirley Coppen, but Shirley Coppen, MPP, so it must be official. I have a substitution slip, Paul Klopp substituting for Len Wood, and that too is signed not just by Shirley Coppen, the whip, but by Shirley Coppen, MPP, so it's a good substitution slip.

I've got one here, Elizabeth Witmer substituting for Leo Jordan, October 5, 6, 7, 8, 1992, and it's signed by Dianne Cunningham; I know she's an MPP. I have one here, Bob Huget being substituted for by Noel Duignan on October 13, signed by Shirley Coppen, MPP; Wayne Lessard substituting for George Dadamo on October 6, 7 and 13, signed by Shirley Coppen, MPP; Randy Hope substituting for George Dadamo on September 30, October 1, 5 and 8, signed by Shirley Coppen, MPP.

Yes, Mr Offer, MPP?

**Mr Steven Offer (Mississauga North):** With the help of the clerk, I think as we left off Monday last we were speaking to Ms Witmer's motion. That motion, after some discussion and clarification, was to subsection 7(1), which was basically to repeal subsection 7(1).

**Ms Sharon Murdock (Sudbury):** Strike it out.

**Mr Offer:** Strike subsection 7(1) out.

**The Chair:** Yes, Mr Offer.

**Mr Offer:** I just wanted to be certain that was Ms Witmer's motion that we're talking to.

**The Chair:** No, it isn't. That one, you'll recall, similar to a previous one, was not quite in order because of the previous motion, so we're down to Ms Witmer's motion "that subsections 6(2.1) to (2.4) of the act, as set out in subsection 7(1) of the bill, be struck out and the following substituted" etc.

**Clerk Pro Tem (Mr Todd Decker):** She withdrew that.

**Mr Offer:** Oh, she withdrew that. Okay, that's fine. I guess the only thing I have as a concern is a motion that I want to move in terms of an amendment to the section myself. I'm just asking for a clarification. If Ms Witmer's not here to speak to her own motion, then I'm not going to

speak on her behalf nor certainly the reason for it. But in the event there is a vote, or whatever, called and her amendment loses, I do not want this, of necessity, to rule out my amendment which I wish to make thereafter.

**The Chair:** This is sort of like a motion in limine.

**Mr Offer:** I would just like to get a clarification. I'm not going to be speaking to the motion unless Ms Witmer is here to do so. I just want to make certain that the motion I wish to move is not in any way limited.

**The Chair:** You're referring to your motion "that subsections 6(2.2) to (2.4) of the act, as set out in subsection 7(1) of the bill, be struck out and following substituted:

"Combining full-time and part-time units...

"Non-application..."

**Mr Offer:** Yes.

**The Chair:** You haven't moved it yet, but there's nothing apparent there that would make that not in order.

**Mr Offer:** Okay, fine.

**The Chair:** That having been resolved, what would you like to say about Ms Witmer's motion?

**Mr Offer:** There's nothing I can say about it.

**The Chair:** Would anybody like to say something about it? Ms Murdock, surely you'd want to comment on that as the parliamentary assistant, it being a significant amendment.

**Ms Murdock:** Actually, I saw Ms Witmer in the hall and I know she's planning on being here, so I hesitate to—

Interjection.

**Ms Murdock:** Obviously our amendment is taking into consideration the full- and part-time bargaining units and allowing them to be joined, and we are not in agreement at all with Ms Witmer's motion to have the entire thing struck out. Are we speaking to subsection 7(1), subsections 6(2.1) to (2.4), Mr Chair?

**The Chair:** Yes.

**Ms Murdock:** Right now in the existing legislation under the Labour Relations Act the board has the discretion to do what Ms Witmer is suggesting already. They have, in their discretion, separated the bargaining units. Therefore, this would maintain the status quo, and we're not, evidenced by our amendment in Bill 40, prepared to accept that.

**Mr Offer:** Following on the comments of the parliamentary assistant, I think what we have here and what we see here is a parting of the minds, so to speak.

**Ms Murdock:** It is, definitely.

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**Mr Offer:** I think the parting of the minds is founded on the fact that—I don't want to speak for the Conservatives in this matter, and I won't, but it seems there is some feeling on their part that in no cases is there a similar

interest between part-time and full-time workers in this province. By the wording in Bill 40, the government seems to indicate that in all cases there are similar interests between part-time and full-time workers in this province.

I must say I disagree with both principles, because I fervently believe that in some cases there are full-time and part-time workers who do share the same interests and who want to be thought of as sharing the same interests. In other cases, in another setting, there will be full-time and part-time workers who do not share the same interests and who do not wish to be thought of as sharing the same interests. That does not mean that one aspect is right or wrong. It is to recognize that there are workplaces that are different, there are work functions that are different and there are employees who are different and who have different interests.

It would seem to me that for legislation to be, first, effective, and second, realistic to the real workforce, we should allow, in legislative form, the workers of that workplace to make the decision. I see in the government's Bill 40 the taking away of that right. It is not allowed for workers of a part-time or full-time nature in a workplace to say: "We do not share the same interests. We do not want to be combined. We do have different interests." I think, fundamentally, that is a wrong and erroneous principle for the government to enshrine in legislation.

It seems to me, dealing with the changing workforce and workplace—I spoke about this a little bit on Monday, when we spoke about the service sector and the fact that many years ago there were primarily full-time persons in the service sector and now there are part-time and permanent part-time, and from that grow different interests. For some, the primary interest may very well be the hourly wage. For others, the primary interest might be benefits, pension. I'm not saying one person is right or wrong in having that as their interest; I'm saying that's what the legislation should allow.

The legislation should allow for workers in workplaces to have different interests if they want that. We shouldn't be dictating that in some committee room at Queen's Park; we should be allowing the workers of this province to make that decision. If the workers in a workplace say, "We don't have and we don't want to be thought of as having the same interests, part-time as to full-time," that should just be fine. It should just be fine, not only for this government but for any government of the day, to say, "That is just the way it is." It isn't right that governments take away that opportunity for a worker to express his or her opinion.

As much as I am concerned about maintaining the traditional community-of-interests arguments, because I don't think they're reflective of the day, so I'm concerned about saying that in no circumstance, mathematically speaking, can workers in a real way express that they do or do not have the same interests, part-time to full-time or vice versa.

I believe this is a real fundamental parting of the ways; certainly for my caucus it is. I've expressed opposition to the purpose clause. I've expressed opposition not only to its wording but also to its being placed as a purpose and not as a preamble. I have expressed concerns on other

areas—hopefully, we'll be able to get to them—but this really does address, in my opinion and in the opinion of my caucus, whether legislation is going to allow workers to express their own opinions. Bill 40, in dealing with the part-time and full-time combination, without any question, takes away the rights of workers to that expression.

I can assure you, as I've received an assurance already, that an amendment I will move will deal with this matter in some detail. This is, to me, fundamental for that workforce which is either part-time or full-time. I see this, though it doesn't say it in legislation, as attacking the service sector of this province. That's how I see it. I see Bill 40 as an attack on the full-time and part-time workers of the service sector in this province.

I can tell you I have some very grave concerns about going either to the position that there is no community of interests or to the position that there is always a community of interests, because in the real world out there, in the real workforce out there, they know that they can't be found in four lines in one section of legislation. They know that the four lines or whatever in section 7 of the bill cannot fully indicate who and what they are, that only they can do that, and they can do it by being allowed to vote; that's how they can do it.

They can address their own issues when they are fully and freely allowed to vote and to say whether they do or do not have, in the part-time case, the same interests as their full-time counterparts. This bill takes that away. There's no question, as we will deal with the other sections, as we talk about the mathematics of this, that it does take away the rights of workers to fully and freely exercise their choice. Any piece of labour legislation that does that is, in my opinion, not only flawed but fatally flawed.

If we really believe in giving workers the right to choose, if we really believe in giving the right to part-time workers to combine with full-time, if they want, if we really believe in giving the right to full-time workers to combine with part-time workers, if they want, then we will put it in legislation. This legislation doesn't do it. Mathematically, it does not do it. I've brought it out in the public hearings time and again. Ministry staff agreed with me. They recognized that the legislation can operate in that way.

I looked for a government motion to address this issue and there isn't one. There is not a further government amendment dealing with this matter, and I couldn't believe it. We heard it clearly during the public hearings that we went through. We asked for clarification from ministry officials who properly and rightly and clearly gave us that information. Notwithstanding that, the government has refused to introduce an amendment. But they don't have to introduce an amendment. I'm going to let them off the hook. They don't have to introduce an amendment if they vote in favour of an amendment I will be moving. That will get you off this hook. This will get you off the dilemma.

1550

Even though you haven't brought forward a motion to amend the bill, and I'm critical of that, you will still be able to address the issue by voting in favour of the motion I will be moving when we get to that aspect of the clause-by-clause deliberations. Having said that, I recognize that



Ms Witmer is here and we are speaking to her motion and I have nothing to say at this time.

**The Vice-Chair (Mr Bob Huget):** Further discussion?

**Mrs Elizabeth Witmer (Waterloo North):** I regret I was late. The press was questioning me on an issue.

The intent of this particular motion is to delete subsections 6(2.1) to (2.4), which require the board to combine full-time and part-time employees into a single bargaining unit, and adds a new requirement to section 6 of the act. Section 6 empowers the board to determine the appropriateness of bargaining units. The amendment maintains the board's jurisprudence over determining whether it is indeed appropriate to combine full- and part-time employees into a single bargaining unit for collective bargaining.

This would provide the board with an opportunity to consider all of the facts of the particular case and to determine if there is a community of interests that exists between the two groups of employees. As a result, it would give the freedom to employees to be part of a bargaining unit that they wished to be involved in.

I spoke to this section the other day and I think most of the comments I made at that time would pertain to this section as well, so I will conclude my remarks. We just want to make sure that the community of interests be considered and that all individuals have the opportunity to join a union of their choice or not to join a union, if that is their wish.

**The Vice-Chair:** Thank you, Ms Witmer. Any further comments? All those in favour of Ms Witmer's motion please indicate. Opposed? The motion is defeated.

**Mr Offer:** I have a motion I would like to move. I move that subsections 6(2.2) to (2.4) of the act, as set out in subsection 7(1) of bill, be struck out and the following substituted:

"Combining full-time and part-time units

"(2.2) The board shall combine the bargaining units for full-time and for part-time employees into one bargaining unit only if a representation vote is taken and more than 50% of the ballots in each of the separate bargaining units are cast in favour of the trade union.

"Non-application

"(2.3) Subsections (2.1) and (2.2) do not apply with respect to bargaining units of employees described in subsection (3) or bargaining units in the construction industry."

**The Vice-Chair:** Thank you, Mr Offer. I assume you want to speak to the motion.

**Mr Offer:** I very much do wish to speak to this motion. To begin, I would address just very briefly comments to the second part of my motion, subsection (2.3), where it states, "Subsections (2.1) and (2.2) do not apply with respect to bargaining units of employees described in subsection (3) or bargaining units in the construction industry." That is very much in keeping with the current legislation.

But I do want to talk at some length on (2.2). This is the point I have alluded to over and over again. To fully understand why I've made this motion, in my opinion one has to have regard to the current legislation, secondly, to Bill 40, and thirdly, to the amendment I have moved to the bill.

Firstly, with respect to the legislation that is currently in force, the Ontario Labour Relations Act, there has been much said. I won't go on with respect to this issue, but it has been the decision of the Ontario Labour Relations Board that where there is an application made by part-time and full-time units for combination, the board has, I believe, consistently ordered that such a combination will not take place. The reason they have given is that the full-time and part-time workers in each unit do not share what has been commonly referred to as a community of interests. That, I believe, is a series of decisions which have grown over time, many of which were steeped in a workplace of years ago and not reflective of the new workplace. I've spoken expressing my concerns over continuing and maintaining the necessary exclusion as a result of a community of interests of the combination of full-time and part-time workers.

That is the current legislation. In essence, full-time and part-time workers will not be combined even if they want, because there is a body of decision which has stated that it is inappropriate because they do not share a community of interests.

We have Bill 40. To me, the significant part within Bill 40 states that the board can combine part-time and full-time workers if 55% of the combination of workers are in agreement for combination. In other words, if the total amount of workers—that includes the combination of full-time and part-time workers—exceeds 55% or is at least equal to 55%, then the board can order the combination of part-time and full-time workers.

I've spoken about this because I believe fundamentally this is a very principled parting of the minds in this matter. Why do I say this? I say this because the members of this committee will know that I have brought forward this scenario often enough: If there is a workforce of 100 workers, of which 55 are full-time and 45 are part-time, and there is a vote and all of the 55 full-time workers vote in favour of combination and all of the 45 part-time workers say no to combination, then this bill says, "You're combined."

If that is not the potential operation of this bill in this matter, then let me hear it right now from ministry officials or from the parliamentary assistant, because I have brought this forward time and time again and it has never been refuted. In fact, it has been stated that yes, this is something that can happen.

1600

**Ms Murdock:** Do you want me to answer that right now?

**Mr Offer:** Yes, sure.

**Ms Murdock:** A motion that we are bringing forward will significantly change your concerns, I think, certainly in those workplaces where there is already a bargaining unit in place for either part-time or full-time workers. In a scenario, for instance, that you have mentioned where it would be a brand-new workplace, you're correct: It would start from scratch. Fifty-five per cent of the members would be signed, either part-time or full-time, and then the board would have to make a decision as to the validity of the cards and so on. Then if it was 55% or more, they

would be automatically certified, and if it was under, there would be a secret ballot vote.

**Mr Offer:** Where is the government motion to the bill that would address the concern I have with respect to the existing units?

**Ms Murdock:** It is subsection 7(1) of the bill, subsection 6(2.5) of the act, and it would be the next one coming up.

**Mr Offer:** This is an important area because it says that "the board may determine that separate bargaining units for full-time and for part-time employees are appropriate if the trade union applying for certification is already the bargaining agent for either the full-time or the part-time employees."

**Ms Murdock:** That's right.

**Mr Offer:** That doesn't address my concerns. Let it be understood right away that that does not address my concerns whatsoever.

**Ms Murdock:** With respect, I would say that it certainly addresses one of your scenarios that you mentioned during the hearings. In your case, for example, where you have 100 employees—55 full-time, 45 part-time—the likelihood of all 55 agreeing to become union members and the likelihood of all 45 saying no is slim, to say the least; you're going to have a mix. But we think that the motion we're going to be speaking to later covers those situations where part-timers could be basically swept in, from the scenarios that you have mentioned, where their views would not hold any weight, in a situation where a bargaining unit already exists at the workplace. Actually, it was you who induced us to work on this motion, Mr Offer.

**Mr Offer:** I think that was a compliment, but I'll wait to see the actual explanation of the—

**The Chair:** I must say, to have induced a parliamentary assistant is a major accomplishment.

**Mr Offer:** I will take a look and see how they wish to explain this, because I do not see that amendment as having met my concern. However, I recognize we are not dealing with the government's motion right now; we're dealing with the motion I have made. And what have we heard so far? We have now heard, through the parliamentary assistant, that the scenario I have painted is possible.

**Mr Paul Klopp (Huron):** Highly unlikely, but possible.

**Mr Offer:** Government members say "highly unlikely." Well, we then go into the different mathematical computations. What number is it that will move government members to say that part-time workers as well as full-time workers in this province should have equal say when it comes to combining units?

I don't believe that to say that this is an unlikely scenario is a sufficient response, because we can go through a variety of numbers; we can go through a variety of percentages. That's not the issue. The issue is principle. If there is an application for combination of part-time workers with full-time workers, I say let that proceed, but let it only be successful if we have a majority in each unit saying yes.

Let us not go into the different numbers the government tries to bring forward. To me it does not matter how many workers comprise a part-time unit nor how many in

the full-time sector, nor does it matter who is the driving force. You're always assuming it's the full-time workers' unit that's going to be the driving force. In fact, I think what might very well happen as the workplace seems to evolve is that the part-time workers will be the driving force. They may be the unit for which there are more employees. They may be the unit of workers for which there is growth.

So the question is, should we in essence be concerned as to who is the driving force, full-time or part-time? I don't believe we should. Should we in this legislation or in this Legislature be concerned as to whether there is a community of interest? I think we can make the argument that we shouldn't be. It should be up to the workers in the workplace to make that decision. They are the ones—

Interjection.

**Mr Offer:** Pardon me? I didn't hear the comment.

They are the ones who should be making that decision. It shouldn't be some dictate from the Ministry of Labour, as approved by some Legislature in some year in the province of Ontario.

Workplaces change. People have, in terms of the workers, their own opinions as to whether they have the same community of interest. I am saying that if a worker or unit of workers of either the part-time or the full-time sector wishes to combine, then legislation should be in place to allow them to follow a certain process.

This legislation is significantly and fundamentally deficient because, in order to give true credence to their choices, it must be based on a democratic vote, of which a majority carries. Everybody will understand that. There isn't a person who would deny that's not the way to go. For a full-time workers' unit to be combined with a part-time workers' unit when you do not have a majority in each unit saying yes, flies in the face of democratic choices in this land. Bill 40 rips that apart.

I have said publicly and privately that there are examples where the rights of workers have been taken away in this legislation. I know the government members say, "Oh, it's another opposition member hysterically criticizing government." Well, this is an example. If there is a member in this Legislature and in this room who can show me how this doesn't take away from the rights of individuals, then let him or her say that right now, because it does. And if they can't say that, then don't criticize anybody who says it does, because it does take away the rights of an individual to choose whether to be combined or not to be.

1610

Parliamentary assistant, you must free Mr Hope from the shackles of this gag order. I can see that Mr Hope is champing at the microphone wishing to be part, but there must be some dictate from higher on that says to Mr Hope, "No matter what is said, how right it is or how much you want to be part of this debate, you must step back." Oh, I see that Mr Hope is now looking at Mr Huget, because they both wish. They have both been told in no uncertain terms, "No matter what the debate is, when you are moved to speak, just remove yourself from the floor."



It is unfortunate, because we are talking about a very serious piece of legislation. We are talking about an area in our economy where a lot of people are directing their attention—that is, the service sector. I can't help but feel that this full-time and part-time employee combination area is directed primarily at the service sector. I know it can be found in the manufacturing area, but I can't help but feel that the true impetus behind this is that the service sector is now moving from full-time to part-time and we want to make certain we can gather in all the employees. I've said it.

I am saying, if you want to combine full-time and part-time workers in this province and you want to do more than just say you're giving rights—because you're not; you're taking away rights—then you will agree with my amendment. It is not a magical piece. All it does is say that before full-time and part-time workers in this province can be combined into one unit, each of the units must say yes by a majority vote. There is nothing wrong about that. It is democratic. It is majority rule.

I am saying if that be the wish of the workers of any one particular workplace, so be it. Let them make the decision. Let them decide whether there is a community of interest. It should not be up to the current Minister of Labour to say, "I know that every part-time and full-time worker in any workplace has the same interests." That is arrogant, it is wrong, it is unprincipled, it flies in the face of freedom of choice and it flies in the face of democracy.

If a decision like that were made which affected you, you would be standing and shouting from the highest precipice, indicating how wrong that is. If you were dragged into an organization of which you did not want to be a part, you would be standing up and saying: "Where are my rights? I have a say and I am part of a group." If that group says yes by a majority, then I understand that, but if they don't and you're still dragged in, you would, with right, say that is wrong. You would be right to criticize anyone who makes that decision, because that's taking away your choice. So I speak to this issue.

I am happy that the parliamentary assistant has indicated there is some sort of government motion. I have taken a look at it. It certainly isn't the one that would address these concerns. My issue is an issue of choice; it's an issue of majority; it's an issue of democracy; it's an issue of giving to workers in this province the right to choose.

If you do not agree with this amendment, if you do maintain that which is now in Bill 40, then you are taking away the rights of workers in this province, both part-time and full-time, whenever there is an application for a combination. Make no mistake about it. You have no argument; you have no defence; you have nothing you can say.

**Ms Murdock:** Yes, we do.

**Mr Offer:** The parliamentary assistant says, "Yes, you do." I would like to see and hear—

**Ms Murdock:** First of all, this is not a section—I know you keep saying it's a section on choice, but it really isn't, because in the end, the board will determine what is the appropriate bargaining unit. The other thing, as I listen to the comments that you've made, is that if we follow your scenario to the end and say that this hypothetically

passed, then that would mean that the board, in the future, would have to look at classifications of workers in almost every workplace.

The board, when it makes its decision as to what constitutes a community of interests, even under the amendments to Bill 40 it'll still be making a determination of whether the community of interests is the same. So the choice that you're talking about in joining the union in the first place is not at issue under this section. I know we disagree fundamentally on that, and I know there's a basic philosophical difference in seeing a difference between part-time and full-time workers and their community of interests, so I don't think there will ever be any meeting of the minds in that particular area, but to say that this is depriving workers of choice is, I think, totally false.

**Mr Offer:** This is exactly where we differ in our positions. I think the parliamentary assistant indicated that I am holding on to some sort of a community-of-interests argument. I don't know how many times one can say this, but I'm not. I'm just saying that if workers themselves believe there are different interests part-time to full-time, if they make the decision, I think that's right, just as, if workers decide they have the same interests, I think that's right.

To me the driving issue is the decision by workers in this province. I think it's wrong for a government to say that in all cases—and it is saying that in this legislation—there are the same interests between full-time and part-time workers. I think that is as wrong as saying that there are never the same interests; I believe that to be equally wrong.

Maybe it's because the answer is just so much in front of you that it's so difficult to see. The issue is up to the workers. What is the problem here? Why can't the government see, in this legislation, that the decision to combine, the decision to determine whether there are similar or dissimilar interests, should be up to the workers in the workplace? If you were in the workforce, wouldn't you want that decision? Wouldn't you want to be making that decision?

1620

What would you say if the government said, "There is always a difference, a dissimilarity of interests, to you as workers, part-time or full-time, in a workforce"? You would probably be on the front steps of Queen's Park, 5,000, 10,000, 15,000, 20,000 strong, saying: "How in the world could a government ever say that in all circumstances between part-time and full-time workers there is always a dissimilarity of interests? How arrogant a government could that be, to make that decision?" And you would be right.

All I'm saying is that if it is wrong for the government, any government, to say in all cases there is a dissimilarity of interests between full-time and part-time workers, it is equally wrong for a government to say that in all instances there is a similarity of interests, full-time to part-time.

I just can't understand for the life of me why a government would be opposed to allowing workers in the workplace to make these decisions. I just do not understand why they would not only not allow them to make the decision but they take away rights as they promote their

position. It is just incomprehensible to me, and maybe it's me, but I've looked at this bill up and down. I've discussed this part dealing with the part-time and full-time workers. Members here have heard me and I think most members have asked similar questions on the issue of part-time and full-time workers. The interesting point is that the answer, no matter who poses the question and to whom, is always the same: Bill 40 takes away the rights of part-time and/or full-time workers in a combination application. It does take away rights of workers.

My amendment is seeking to insert that in the void, workers' rights, workers' choice, workers' freedom to decide what is or is not in their best interests—why are we so afraid of a vote at which the majority rules? I'm not saying that if there are 50 in the part-time sector you have to have 26 to say yes. I'm saying the majority of the votes cast. If there happens to be less than 100% of the workers casting a vote, let the majority of those who cast a vote rule.

But no, and I just cannot believe, I cannot understand, that a government would allow this to happen, that a government, in the service sector—and this is my own feeling, that this section is really devoted to the service sector, and that is where a lot of people are starting to cast their attention—is saying no to this.

**Mrs Witmer:** I would like to support the amendment, which is intended to prevent the combining of full- and part-time employees into a single bargaining unit unless a vote of more than 50% of the ballots in each of the separate bargaining units is cast in favour of the trade union. I don't know what possible objection there could be to supporting this amendment, because it does allow each individual in each bargaining unit the opportunity to make a free choice.

What the government is suggesting is that at the present time a union could submerge the part-time group's interests under the weight of the full-time majority. That's my concern. The interests of the part-time groups are being totally overlooked. It almost appears that the government's proposal is a scheme to facilitate certification rather than to protect the wishes of the full- and part-time employees. I believe the wishes and interests of all those employees need to be protected.

I have the impression that this legislation and this section really are more concerned with the facilitating of unionization, particularly as it impacts on the retail, service and financial sectors, where we do have many non-unionized, part-time workers.

I'm concerned that if the government does not support this amendment, which would allow for a vote of at least 50% in each bargaining unit in favour of the trade union, we could have a scenario where we would have 50 employees: 30 full-time, 20 part-time. If 28 of the full-time employees vote to join the union and none of the 20 part-timers vote to do so, the part-time employees would still be represented by the union, even though they are unanimously opposed, even though not one of the 20 part-time workers supported the union.

To me that is wrong. Where is the freedom of choice? What about the democratic choices for people? We talk about democracy, we talk about individual rights and free-

doms, but what the government is proposing here under Bill 40 totally overlooks the opportunity for the individual to make a free and democratic choice. I'm very concerned, and if the government is truly concerned about democracy and freedom of choice, I would urge it to support this amendment. I would urge it to make sure that the part-time employees' interests are not submerged under the weight of the full-time majority.

I'm very concerned that we're not taking into consideration, under the government proposal, the fact that part-time employees are often employed on a short-term or very casual basis. Oftentimes their jobs are transitional, and you have full-time employees with totally different interests. Many of them are interested in pursuing a long-time career. These two groups of employees have very distinct interests. If these two employee groups wish to be represented as individual bargaining units, I believe they should be entitled to do so and that their interests need to be addressed separately.

I'm concerned that if you combine bargaining units into a single bargaining unit under which one group has had no say whatsoever, you could find one group being forced to go into a strike over an issue which really does not apply to it, but again, they have no freedom of choice and they would be forced to do so.

So I would certainly strongly support this amendment. I believe it's absolutely essential that all individuals have the opportunity, within a bargaining unit, to make a free choice as to whether or not they want to be represented in a combined, single bargaining unit. I just can't believe that the government couldn't support this particular amendment.

**The Chair:** Thank you. All those in favour—

**Mr Offer:** Recorded vote.

**The Chair:** —of Mr Offer's motion, please raise your hand and keep it raised until your name is called.

**Ayes—3**

Offer, Turnbull, Witmer.

**Nays—5**

Hope, Huget, Klopp, Murdock (Sudbury), Ward (Brantford).

**The Chair:** Thank you. The motion is defeated.

Ms Murdock moves that section 6 of the act, as amended by subsection 7(1) of the bill, be further amended by adding the following subsection:

"Existing bargaining unit

"(2.5) Despite subsections (2.1) and (2.2), the board may determine that separate bargaining units for full-time and for part-time employees are appropriate if the trade union applying for certification is already the bargaining agent for either the full-time or part-time employees."

**1630**

**Ms Murdock:** During the hearings we heard much concern for situations whereby a bargaining unit that was in place could conceivably ask for a combination of the units for, say, a part-time unit or whichever the non-represented unit was, never having any indication in any way of its desire to join and that it could conceivably happen, as



we heard during the hearings, that it could be swept in without any sign of consent.

As a consequence we bring forward this motion, which basically means that it will allow more flexibility, and certainly representation, for the non-represented unit or a group of employees to join or give an indication of their desire to join. It is a legal technique, I guess you could say, to provide an exception. I think too it would allow the board to look at the collective bargaining patterns that have already developed. We think this has countered some of the arguments that were raised during the hearings and also gives the non-represented units an opportunity to express their own desires.

**Mr Offer:** I have a question, if I might, to the parliamentary assistant or to Ministry of Labour staff. How does this deal with the issues we've just brought forward?

**Ms Murdock:** You yourself raised the issue a number of times—we'll use part-time and full-time—where full-timers are represented by a bargaining agent and part-timers are not. That's pretty standard, actually, in most instances at the present time. Conceivably, you could have 55% of the bargaining unit indicating that they wanted the part-timers in when the part-timers could conceivably never have even one vote towards that desire.

This section will change that in that it will require that where a bargaining unit exists in a workplace and part-timers are not represented, the part-time staff will have to go through the card process and so on. It will require the board to test for majority support to combine the full- and part-timers. The union would then be required to show the part-time vote as separate in a situation where there is a representation from one of the groups.

**Mr Offer:** If I just might follow up, where is that?

**Ms Murdock:** What do you mean, "Where is that"?

**Mr Offer:** With the majority votes and things like that. The current bill goes from (2.1) to (2.4). This is an add-on; it is not an amendment to the existing legislation.

**Ms Murdock:** That's right.

**Mr Offer:** It says here, "Despite subsections (2.1) and (2.2), the board may determine"—the first words are "the board"—"that separate bargaining units for full-time and for part-time employees are appropriate if the trade union applying for certification"—so already we're excluding the situation where there are existing certified units.

**Ms Murdock:** Excluding?

**Mr Offer:** Yes. It says "if the trade union applying for certification is already the bargaining agent for either the full-time or part-time employees." It's saying that if the union applying for certification is already the agent for one or the other, then the board may determine that separate bargaining units for full-time and part-time units are appropriate. What are the factors that the board takes into account?

**Ms Murdock:** There are enough precedents.

**Mr Offer:** I cannot disagree more. There is no precedent, because the precedent under which the board has made previous decisions is based on a preamble which the government has repealed. It has inserted a purpose clause

by which there has not one single decision made. I disagree vehemently.

**Ms Murdock:** The criterion used in this instance would be that the unrepresented people who are being requested would still sign cards. You would go through a regular organizing situation. You would still sign cards. You would have to indicate that the unrepresented group would have the requirements as per the other sections of the legislation, which would be the 55%. I know I said a majority; I stand corrected. Anything from 40% to the 55% would require a mandatory vote, between 40% and 55%. It would still go through that same process, but that's only in a situation where there is already a represented unit there and that union was applying for representation of the part-time—I'm using part-time as an example—was applying for representation of the unrepresented group.

**Mr Jerry Kovacs:** If I may speak to it, Mr Offer, language in the proposed additional subsection contained in the motion, (2.5), has language that should, if you read it carefully, trigger the reader to review the existing (2.2) in Bill 40. Subsection (2.2) in Bill 40 says, "The board shall determine that separate bargaining units for full-time and part-time employees are appropriate if it is satisfied that less than 55 per cent of the" workers across the combined unit are members of the trade union applicant.

As Ms Murdock indicated, the point of this provision is to ensure that where the trade union applicant already represents one or the other of full- or part-time employees in a unit, it can't apply to the board and in its application name as an appropriate bargaining unit the combined full- and part-time, all-employee unit and, having done that, simply submit membership cards of members whom it already represents. The effect of this? If you look to subsection (2.5), the wording of (2.5), as proposed, says, "The board may determine that separate bargaining units for full-time and for part-time employees are appropriate." That means that, in accordance with the (2.2) rules, where separate bargaining units are appropriate the board may conduct representation testing in each of the separate categories.

The result is that on an application in the scenario that I just described the board is free to test among the category of employees whom the union doesn't yet represent. It wouldn't be sufficient to submit the cards for the members whom you already represent, for whom you already have a collective agreement. The board would be free to say that it's necessary to test for membership support in the other category of employees.

**Mr Brad Ward (Brantford):** Do you understand it?

**Mr Offer:** I don't understand. I'm glad Mr Ward asked if I understand that amendment. I absolutely do not understand this at all. I recognize membership testing. I think I understand when it says the board "may" do something. It doesn't mean that they must, but it does mean that they may. I would like anybody to read (2.1) and (2.2) and now (2.5), which have, at least twice, the word "despite." Subsection (2.2) starts out, "Despite subsection (2.1)," and (2.5) starts out, "Despite sections (2.1) and (2.2)." It talks about "the board may determine." It talks about some representation testing.

I would like every worker in this province to read (2.1), (2.2) and (2.5) on one side and read my motion that was defeated on the other and says that: "If you have the units and you have a majority on both sides and they say yes, then you're combined. If you don't have it, then they can't be combined," and ask people which one they think protects their rights.

1640

**The Chair:** Are you proposing a referendum?

**Mr Offer:** I'm on the Yes side. I'm glad, actually, the Chair brought forward the referendum, not that I'm going to—

Interjections.

**Mr Offer:** What is the principle? I'm not going to speak about Yes or No. I'm going to speak about the principle of people having a right to cast a vote. Everybody in this country, no matter how they stand on this issue—Yes or No or they don't know or they don't want to know or they don't care—I will tell you something: One thing they do know is they have the right on October 26 to go and cast a vote. That they do know. That they understand. That we understand. There's nothing we are going to be able to say that is going to convince them which way to cast their vote. All I think we can say is: "You have that right. Exercise it." All we are saying with respect to full-time and part-time workers is, give them the rights.

This bill and this subsection are fundamentally deficient in that though they attempt to address some of the matters, they don't do what people want. It doesn't give them the right to say yes or no.

**Mr Kovacs:** I think it's important to reiterate Ms Murock's point in respect of the current law and the maintenance of that law in respect of appropriateness of bargaining units. The act mandates the labour board to determine appropriateness of bargaining units. It does not provide employees who are applying for a trade union to represent them to choose their bargaining unit.

I would attempt to explain that state of the law by giving you the example of an applicant trade union that applies for certification to represent a bargaining unit of line workers in a manufacturing plant plus shippers in the warehousing part of the operation, so a bargaining unit of both line workers and shippers. If it turns out that the trade union application has cards only from one of those categories or classifications of persons, then, under your scenario, it seems to me you suggest that the employees would have a right to vote on what the appropriate bargaining unit is.

The law, as represented in the act and in the jurisprudence of the board, is that it's for the labour board to determine on other grounds than the wishes of the employees; rather, it's on legal grounds of appropriateness that the bargaining unit is determined.

The provisions in respect of full-time and part-time employees try to correct a line of Ontario Labour Relations Board jurisprudence that's at variance with the jurisprudence of every other jurisdiction in the country. Every other jurisdiction in the country finds that full-time and part-time employees together form part of an appropriate

bargaining unit. I think the problem with your suggestion is that you suggest that categories within an appropriate bargaining unit should have a right to elect or to choose appropriateness, and that's at odds with the Labour Relations Act as it stands and as it will continue to stand in respect of appropriateness of bargaining units.

**Mr Offer:** But on the same point, the current decision by the board dealing with part-time and full-time workers is that the board states there is a different community of interest and as such the combination of part-time and full-time units cannot take place. This bill takes that away. It says we are no longer going to have that artificial distinction between full-time and part-time workers based on community of interest.

Thank goodness for Hansard. I don't know how many times I've said it: I agree with that. I agree that the artificial distinction of community of interest is from another day, but there is a "but," and it is that just because you do away with it doesn't mean to say that in all cases, in every workplace, there is no difference or dissimilarity of interest. That's what this bill is saying, and I'm saying that's equally wrong.

You're going from one side way over to the other. What is the problem in letting the workers of the workplace decide? I can understand there being some discretion left to the board to decide appropriateness, but why would you go from one side, which says in no case is there a similarity of interest between part-time and full-time workers—which is now, if not in the act, certainly by board decision—to the other side, way over on the other side, which says in all cases there is a similarity of interest?

How the government can't allow workers of this province to make that decision as to what is and is not in their interest is absolutely incredible to me. Subsection (2.5) is just another layer on an onion that when you peel it away has the same impact: Workers' rights are taken away.

Members of the government think, "Well, I'm never going to have to really defend that." You are going to have to defend it. You're going to have to defend it when the first combination application takes place and somebody asks, "Well, Jeez, you know, how come I got swept into this unit and I didn't have any say in it?" If they ask me the question, I'll tell them the answer. If they ask you the question, you're going to have to give them the answer, and that is that you voted in favour of it. You voted in favour of taking away the rights of a worker to decide.

The parliamentary assistant shakes her head. To me it doesn't matter whether one shakes her head in the affirmative or negative. All I do is say, "Read the bill." Read the bill and make your decision. Read the bill, and read what was put forward as an amendment, which was voted down by the government. That's all I say, and make your decision; clear, clear choices.

You want to talk about this. You want to talk about this area. I haven't really dealt with it in the type of particularity that I wanted to because I know that we're under an eight-day closure motion. We started Wednesday; Thursday, Monday and now it's Thursday, so this is half of the days. So we will be close to four days now of a very complicated piece of legislation. Not only is it complicated,



but the government brings forward amendments, I must say, which themselves should be the subject matter of discussion, which themselves should be the subject matter of public hearings. I tell you that now.

Members laugh, but I'll tell you something: When you bring forward that new purpose clause and say that you didn't want to listen and you don't have any discussion as to what the impact of that is, you're shutting the door. As technical as these amendments are, you can't just bring in a cosmetic and very little substance. You cannot bring those forward and say, "Well, we're just going to deal with it." You're going to deal with these amendments, and you know what's going to happen. Let it rest on your shoulders.

1650

I can tell you that we're now finishing almost four days of just eight days of clause-by-clause. I only ask you to take a look at what has happened in the standing committee on administration of justice on the advocacy bills. You will eventually, under your closure motion—I think the closure motion permits this—be passing amendments to this bill that the members of this committee have not heard of. It is a strict dereliction of duty and that is the essence of what a closure motion does; eight days and now you're going to be dealing with motions and passing motions into law which you have not even read, let alone understood. I don't mean that in a critical sense; I'm saying "understood" in terms of their impact from different areas of the public.

So if you think subsection 6(2.5) somehow fills the void of workers' rights, you are absolutely wrong and we're probably going to have a vote on this and probably it's going to pass because the members of the government side will just lift up their arms and say, "And it shall be."

**The Vice-Chair:** Further discussion?

**Mrs Witmer:** I will not be supporting this government motion and I believe that this section should be struck out. I think the amendment that we just dealt with certainly did respond better to the concern of making sure that individuals do have the right to be represented by the union of their choice, so we will certainly be voting against this at the present time.

**Mr Pat Hayes (Essex-Kent):** I'm going to be very, very brief because I'm not going to take too much time so we can get on with the other amendments. I think the key thing that Mr Offer has said several times in his responses to the bill is that the workers in the workplace make the decision. I think this is exactly what that is doing.

I think the other issue is that we keep wanting to separate workers and make it look as though part-time workers would not desire or want to have the same type of benefits or similar benefits that full-time workers have been able to get. I have a real problem with that because I've never run across anyone who had to work part-time who wouldn't want to have the same kind of benefits of someone in another bargaining unit or similar bargaining unit who had decent benefits. That's all I have to say.

**The Vice-Chair:** Mr Offer, briefly.

**Mr Offer:** There are two points which you brought forward, and one was the right of a worker to choose. All I would do is, as I deal with the second point, invite you to

show me where that is with respect to this section that we are talking about. You will be able to see it in my amendment. I would have expected you to have supported the amendment that I brought forward which said that the board shall combine the bargaining units for full-time and part-time employees into one unit only if a representation vote is taken and more than 50% of the ballots cast in each of the separate bargaining units are cast in favour of the trade union. That does give workers the right to choose. You spoke in favour of my amendment.

Now to deal with the other issue.

**Mr Hayes:** A point, Mr Chair: I don't want to prolong this, but I don't want Mr Offer to insinuate that I spoke in favour of his resolution. I'm talking about the people in the workplace, and your resolution would actually separate those people and that's what's happening. The government motion would give all the people in the workplace a democratic right to express what unit they would choose to belong to, if they want a union or if they don't want a union.

**Mr Offer:** I couldn't disagree with you more. I know that you're here, but I want you to listen to what I'm saying and have been saying from day one. I am not opposed to full-time and part-time workers in any unit being combined. I do believe that the question as to whether they should or should not be combined is one which should be left to the workers. Let me repeat: The question as to whether they should or should not be combined is one that should be left to the workers. My amendment does that. The government bill does not do that. We have heard discussion from the parliamentary assistant and ministry officials which verifies that.

The question you are bringing forward is extremely important to me. It is saying to me that if there is a similarity of interests in the workforce between part-time and full-time workers, I don't want you to make that decision and I don't want that decision to be made by the Minister of Labour. I want that decision to be made by the workers in that workplace. The government's Bill 40 doesn't allow that; my amendment does.

I know it sounds like you're breaking party lines on this point, and you are.

**Mr Hayes:** You don't have to point. You're not on television.

**Mr Offer:** The point is, it doesn't matter to me whether it's on television or not. This is a matter which I think should be on TV. I think there are a lot of people outside of this place who would like to see this debate. I still stand critical of the government when last week it voted down the motion that would move this committee hearing to the Amethyst Room, for which the taxpayers have paid, which is in essence a committee room in a television studio, so that the people of this province could hear these points being made. I would think it's very important.

I am most concerned, whether it is televised or not, that workers in this province be given a right to make the decision on their own. Bill 40 takes that away. They don't get that right. It's left to the board. You shake your head. The parliamentary assistant and ministry staff have confirmed this.

It is crucial that you understand what the position is. I believe it is crucial for members of this committee to be crystal clear as to my position on this. That is, I think the whole community-of-interest distinction is one of another day, a day that has passed, but I do believe there still may very well be examples where workers in one workplace do not want part-time and full-time to be thought of as having the same interests. I believe they should be given the opportunity to make that decision. It shouldn't be a bunch of MPPs sitting in some committee room at Queen's Park who make that decision; it should be the workers in the workplace.

The question is, are the government members in favour of the employees, the workers of this province, making their choice themselves or not. If you support the changes in Bill 40, it is clear that you do not support the right of workers to make that choice.

**Mr David Turnbull (York Mills):** Quite clearly, I believe the previous amendment was more appropriate than this. It is also quite apparent to me that the government couldn't care less about simple democratic principles. We've spoken about this at length, and given the fact that there are an awful lot of amendments that still have to be made, I propose that the question now be put.

**The Vice-Chair:** Is it the pleasure of the committee that the motion be now put? Agreed.

All those in favour of Ms Murdock's amendment, please indicate. Opposed? Carried.

1700

**Mrs Witmer:** I move that subsection 7(2) of the bill be struck out.

The intent of this particular amendment is to maintain the exclusion for professionals. The reason for the original exclusion was the perceived inconsistency between a professional's obligation to his or her clients and the right to strike. It was also thought that the right to bargain collectively is not critical to those individuals, because they are governed by their own specific professional regulatory bodies. I would say at this time that the rationale for the original exclusion continues and is very important in our deliberations.

I'm concerned that if we go ahead as the government has proposed under Bill 40, professionals would be potentially in a conflict-of-interest situation between their professional responsibilities and the responsibilities and accountabilities that could be demanded by them by virtue of belonging to a trade union.

We have had concern expressed, particularly by children's aid societies. These societies are very concerned that their professional staff will be impeded in carrying out their professional duties under the Child and Family Services Act.

As you know, most children's aid societies have legal counsel on staff to handle court-related requirements dictated by the Child and Family Services Act. These lawyers are specialists in child welfare-related legislation, and they are critical to the societies' ability to discharge properly their legal obligations under the Child and Family Services Act.

If you take a look at the majority of small or medium-sized societies, their one or two legal staff complement

would simply become part of an existing bargaining unit. So CASs, without the necessary in-house counsel during a strike—but they would be required to meet their obligations under the Child and Family Services Act—would be put in a position where they must choose between violating the Labour Relations Act by contracting out the work, or discharging their court-related responsibilities to children. Those are the problems, then, that would be faced by these small or medium-sized societies, that position of being put into that dilemma.

You could have similar problems arising in the case of larger societies. Larger societies employ psychologists and other specialists to provide in-house assessments of children who are receiving CAS services. Problems are likely to arise in a strike situation when the union is asked to consent to a society's estimated need for the provision of mandatory services and the number of replacement workers required to address these needs. The union can dispute the CAS's estimates.

As you can see, children in the care of children's aid societies are put in jeopardy if the exclusion for professionals is not maintained, and the concerns that I have shared with you are the concerns that have been brought forward by the children's aid societies. They are concerned about the impact of Bill 40 on their ability to discharge their professional duties. They do believe they will be impeded in carrying out their professional duties under the Child and Family Services Act, and I would encourage the government to support the removal of subsection 7(2) of the bill.

**The Vice-Chair:** Further discussion?

**Mr Offer:** I'd like to speak to this matter. I think this is the beginning of what is going to be a very complicated area. Speaking to the issue of exclusion under the act and matters of this kind, I am very concerned with the impact that this might have with respect to children's aid society workers, children, and I know that down the line in the legislation there are other areas which I believe have a very detrimental effect on others being able to carry out their responsibilities which are mandated to them by other pieces of legislation.

I'm not going to speak at length on this particular section because I do have something to say with respect to the issue of subsection 6(4)—and I believe that's in keeping with the bill—and who are the members of professions, just to indicate that I too am extremely concerned with the legislation as it has been outlined.

**Ms Murdock:** Very briefly, just a correction on something Mrs Witmer said that was in relation to the contracting out of work would not be allowed for a lawyer, say, in a local children's aid office. That is not correct; they would. In fact, contracting out is allowed under these amendments in any situation, so they would be able to contract out to another lawyer to go and represent a child.

Having said that, later on in the amendments you get into subsection 73.2(15), which would allow you to designate different specified workers within a small setting, which point was very well made by the children's aid societies when they were here for the hearings: They would be able to designate certain personnel. Obviously, if you're



in a small operation and there's only one lawyer there, then that person would be designated, or could very well be designated with agreement from the employer and the employee representatives, so I just wanted that correction.

The other thing I should point out here is that professional legislation would take precedence over this section, and so that if there was, as was intimated, a conflict of interest or a perceived conflict of interest, the professional legislation would hold, rather than the amendments to the Labour Relations Act.

Having said all of that, we will not be supporting this section, and when we do get to this section, there are still ongoing conversations with some of the professions, and we will be asking to defer matters related to this section until a later time.

**Mr Offer:** There are a couple of things. You've indicated that there are some ongoing discussions taking place with professional associations, firstly, and you're going to be asking for certain sections to be deferred pending the outcome of those discussions. I hope that you would, at this point in time, inform us as to what those associations are, what sections are going to be deferred, the reason why they're going to be deferred, what is the time period, and how you are going to bring those sections back in. Remember, just as we are working under time closure, so are you now, and you don't have very much time to discuss those particular areas.

Lastly, for a matter of interest on my part, why is it that a professional organization's legislation takes precedence over the Labour Relations Act?

**Ms Murdock:** Why is it?

**Mr Offer:** Yes; you said that.

**Ms Murdock:** For instance, you mean the requirements under the Law Society of Upper Canada over the OLRA.

**Mr Offer:** It's the first one that came to mind.

**Ms Murdock:** Me too. The ethical requirements, for instance, under the law society, would hold precedence, and I presume that everyone working under a piece of legislation would be ethical, but that's not always the case, unfortunately. But your requirements and your professional duties, regardless of what profession you're in—engineering or whatever—would hold precedence over and above giving up some duties under the Labour Relations Act.

I don't know whether there's a law that says that. I would have to look.

**Mr Offer:** You've already stated it on the record.

**Ms Murdock:** I'll ask my colleague.

**Mr Offer:** You've put it on the record.

**Mr Klopp:** Oh, come on, now.

**Mr Offer:** Mr Klopp says, "Oh, come on, now."

1710

**Ms Murdock:** There were a number of questions that Mr Offer asked and—in terms of the consultations, I should correct myself. We agreed we would defer this at the request of one particular group, the nurses' association, because, as you may note, we did not bring forth an amendment. We haven't got to that section yet, Mr Offer,

at which point I will ask if we can defer that at that time. If you want to set a time frame as to when we will bring it forward, I suppose that can be discussed.

**Mr Offer:** So it's the Ontario Nurses' Association?

**Ms Murdock:** Yes.

**Mr Offer:** You're asking that this section be deferred or the section thereafter be—

**Ms Murdock:** Not this section; we're not there yet. That's why this is being a little—

**The Vice-Chair:** That's part of the problem, Mr Offer; we're not on that section at the moment. We're on another section.

**Mr Offer:** Mr Chair, with the greatest respect, I'm ready to deal with that other section. It was the parliamentary assistant who first brought forward the fact that they were dealing with some other organizations, and I thought it was quite in order, since the parliamentary assistant brought that forward, that I would just ask what organizations. But now we know it's the ONA, I would also ask: Is there anybody else?

**Ms Murdock:** Not that I'm aware of, no. I have no knowledge of any other group. It was at the request of the nurses' association that we defer this if at all possible. I said to the ONA that I would be asking for a deferral. If you have objections to giving that deferral, then we have a difficulty.

**Mr Offer:** No, I have absolutely no objection. The only thing I would have appreciated was being informed that there was going to be a deferral request.

**Mr Klopp:** You can't stop people from phoning you, Mr Offer.

**Mr Offer:** Pardon me? I didn't hear what Mr Klopp said.

**Ms Murdock:** Well, he hasn't got the floor; I have.

When I went through the amendments that were put forward, I noticed that Mrs Witmer had one and I spoke to her. I went through yours—they're not all in—but I had gone past that number and you did not have an amendment related to that so I didn't speak to you. If you had one, I would have spoken to you. I did speak to Mrs Witmer.

**Mr Offer:** My next question is: You had indicated that if there is a group or an organization which operates under another piece of legislation, that legislation would in fact be paramount—

**Ms Murdock:** I'll look that up, because that was my information. I will get some clarification to bring that in on Tuesday.

**Mr Offer:** Okay, and I will tell you why it's important. The first thing that came to mind was a series of submissions by—I think we'll recall, of course, one was the Ontario Association of Children's Aid Societies. I think we also remember a very interesting submission made by the professional engineers of the province, and what they had indicated was that—

**Ms Murdock:** They're already covered under the present legislation.

**Mr Offer:** What they had indicated was that they operate under other pieces of legislation. For instance, the children's aid societies of course operate under a piece of legislation which says that they must act in the best interests of the child. They were concerned about Bill 40 and the replacement worker provisions because of the impact they would have.

I think, if my memory serves me correctly, it was either through their submission or certainly through some questions we had, that the impact of this bill and the replacement worker provision would in effect put them in contravention of their piece of legislation which says they must operate in the best interests of the child. Now if there is some—

**Ms Murdock:** Well, we're way ahead of ourselves, though, than this section.

**Mr Offer:** You see, I don't think I am, because I'm responding to your comments. There are people in this room who will remember that I didn't bring this up. You're the one who brought it up.

**Mr Klopp:** It's maybe unfortunate that Ms Murdock tries to help out as it goes with all the explanations, but if we're all feeling bad, why don't we get back on to where we are at? Let's carry on. You're thinking because she brought it up, you want to keep dragging it on.

**Mr Offer:** I certainly appreciate your assistance in this matter, but when the parliamentary assistant to the Minister of Labour states that the concerns dealing with professionals are ones which are dealt with because they operate under their own piece of legislation, which is paramount to the Labour Relations Act—

**Ms Murdock:** It is.

**Mr Offer:** I have heard from the Ontario Association of Children's Aid Societies that this is one of its major concerns. Thank you for your assistance, but it doesn't help the children's aid societies of this province. I would hope that maybe on Monday—

**Ms Murdock:** No, that's Thanksgiving.

**Mr Offer:** —on Tuesday that you would come back to the committee with information as to, when there is this situation, what is or is not paramount, if that is an issue, and we can then deal with this.

It's certainly a matter, I think, that we all thought of. Certainly through the law society we thought of what the impact would be of a solicitor being basically on strike and having the regulations of Bill 40 dictate one way and their own legislation dictate another. I think it's a very valid concern that the parliamentary assistant brought forward.

**Ms Murdock:** I already said I would do that.

**Mr Offer:** Thank you.

**Mrs Witmer:** I guess I'm concerned then that we would be voting on this amendment, since we don't have clarification as to what is intended. Is it intended that professionals would behave according to the professional regulatory body that they're part of, or would they have to choose between violating the Labour Relations Act or—

**Ms Murdock:** Most of the groups that came forward, such as the children's aid society group, the engineers

group, all spoke to the essential services provision, which was their main concern, and unfortunately, the way things are going thus far, I don't think we'll even get to that.

But your section here, the reason I didn't speak at the very beginning in terms of reminding you of our conversation was that our intention is to maintain the exclusion of those professions that are listed, but with some discussion as to an inclusion of another profession, which is the subject of your—

**Mrs Witmer:** My amendment.

**Ms Murdock:** —alternate amendment.

**Mrs Witmer:** Yes.

**Ms Murdock:** I thought it was more to the point on your alternate amendment rather than this one. We are not going to agree to this amendment then in terms of striking it out, so I thought it was okay. That's the only reason I didn't address it earlier.

**Mr Randy R. Hope (Chatham-Kent):** Just dealing with the reflective concerns of Offer, and he holds some legitimate concerns, I would ask the people from the ministry, dealing with the whole issue of whether they belong to a trade union or not, even after a certification, the employer still has the right to make them excluded personnel of a collective agreement. Is that not so, that the employer would still have that jurisdiction to exclude, say, for instance, one person of the legal profession and the children's aid from the bargaining unit under a collective agreement?

**Mr Kovacs:** The way the proposals read in the new LRA provisions respecting bargaining units for professionals is to say that a professions-only unit is deemed appropriate. So from the first instance, lawyers would be appropriate in a unit separate and apart from other employees. That is the rule created in these provision.

**Ms Murdock:** Engineers presently have that right, but no other professionals.

1720

**Mr Hope:** Just so I clearly understand what Mr Offer is trying to say, and maybe I'm wrong and Mr Offer would correct me—I know he will—it's that if you have a lawyer who is a part of the children's aid society acting within the employees employed by the local children's aid group, whatever community it is, and that lawyer is employed with a number of other employees who maybe want to belong to a trade union, that employer will have the right to exclude that lawyer from the bargaining unit under the exclusion clauses of a collective agreement.

**Mr Offer:** You're going to end up on our side, Randy.

**Mrs Witmer:** That's right.

**Mr Hope:** No. Listen, it's in there. I've dealt with this for 13 years.

**Ms Murdock:** Section 73.2 I think is what you're referring to, in the essential service provision.

**Mr Hope:** Right.

**Ms Murdock:** That's where I think you're saying that the employer would have that right. I think it's under subsection (9). I'm not sure, is it (9)?



**Mr Hope:** So the relative concerns that Mr Offer has are reflected at 73.2 versus reflected in this article, when the children's aids are being brought up.

**Ms Murdock:** But that's in 73.2.

**Mr Hope:** We're nowhere near it.

**Ms Murdock:** Right.

**The Chair:** Ms Witmer's motion, all in favour, please indicate. All opposed? Motion defeated.

Ms Witmer moves that subsection 6(4.2) of the act, as set out in subsection 7(2) of the bill, be struck out.

Go ahead, Ms Witmer. Is there any further discussion?

**Mrs Witmer:** Does Ms Murdock know where we're at?

**Ms Murdock:** Yes.

**Mrs Witmer:** This is the section referring to members of the professions.

**The Chair:** Subsection 6(4.2).

**Mrs Witmer:** Just for clarification, Mr Kormos, are you referring to the one where we talk about members of professions?

**The Chair:** I'm talking about your motion that subsection 6(4.2) of the act, as set out in subsection 7(2) of the bill, be struck out.

**Mrs Witmer:** Okay.

**The Chair:** Do you want to withdraw it or do you merely want to adopt the arguments you made with respect to the previous motion?

**Mrs Witmer:** No. The intent of this motion is to ensure that a professional bargaining unit cannot be consolidated with non-professional units. If the government intends to proceed with this particular amendment, it must ensure that professional bargaining units cannot be consolidated with non-professional units in order to avoid a conflict between professional responsibilities and union obligations, and yes, certainly some of the issues that I spoke to in the previous amendment would also pertain to this.

**Ms Murdock:** If I might, just very briefly, what subsection (4.2) does is it takes the engineers' provisions under the existing and it applies it to all professions, so particularly that would go hand in hand with subsection (4). When you remove the exclusion of professional groups, then it makes sense that they should also have the same provisions that engineers do.

The other thing too is that this section under Bill 40 will permit professionals to form a profession's specific bargaining unit, if they so choose, in order to respect any special community of interest they might have. However, it also permits inclusion in a broader unit if the professional employees prefer it. It gives them that choice. If they want to stay by themselves, they can, and if they want to move in with another unit they also can do that, remaining at the board's discretion, of course. We're not supporting having that struck out.

**Mr Offer:** Just on a point of clarification.

**Ms Murdock:** I always hate giving those explanations.

**Mr Offer:** No, I think the parliamentary assistant was extremely clear in this matter. Under Bill 40, although I know there may be one more, there are currently five

professional groups: architecture, dentistry, engineering, land surveying and law.

I just want to be clear in my mind. It seems that (4.2) says that those employees described in sub (4.1)—and the employees in sub (4.1) are the five groups I've indicated—can be combined with other employees if the board is satisfied that a majority of the employees in (4.1) wish to be included in the bargaining unit. So if there is a unit of lawyers and a group of non-lawyers and there is a question as to combining those two groups, the board will combine if it is certain that a majority of the lawyers, in my example, want that.

I almost wondered why we can't give part-time workers in this province that same right.

**Ms Murdock:** The board "may," not "will" or "shall." The board "may."

**Mr Offer:** My goodness, look at that, "a majority of the employees." Shameful that we can't give the part-time and full-time workers in this province the same right.

**Ms Murdock:** You know, this is speaking out of both sides of your mouth here now, though, Mr Offer.

**Mr Offer:** Just a matter of clarification, thank you.

**Ms Murdock:** Here you are on one hand stating that you have these great concerns over professionals having this right, and then in the next one you're saying, "They shouldn't have that," basically. You're having your cake and eating it too, or that's what you would like, and it's not going to happen. Why shouldn't they have that right?

**Mr Offer:** The parliamentary assistant would be right if I were speaking against (4.2) of the bill.

**Ms Murdock:** No, no, no.

**Mr Offer:** I am saying, I think that's right.

**Ms Murdock:** Yes, so do I.

**Mr Offer:** People should have the right to choose.

**Ms Murdock:** So I can expect your support on this subsection.

**Mr Offer:** This is nothing more than a continuation of the act. It's just included. I hope, and it would have been nice, that the principles which the government seeks to give to architects, dentists, engineers, land surveyors and lawyers could also be expanded to, dare I say, the part-time and full-time workers of this province, but I guess not.

**Ms Murdock:** You're right. You guess correctly.

**Mr Offer:** I guess the government won't do that.

**Ms Murdock:** I have a response for you, I believe, that might satisfy you.

**Mr Offer:** No, no. I am speaking in favour.

**Ms Murdock:** Yes. A group of professionals within an office—a perfect example is the CAS office where there is a lawyer who is performing a specific kind of professional duties—is not the same thing necessarily as a full-time/part-time situation where they're doing the same work. You're looking at full-time/part-time workers within a workplace who are doing exactly the same work only not for the same length of time, but in a professional capacity under this section you're not looking at the same work

being done by that professional group. So it is not the same at all as what you're suggesting, Mr Offer.

**Mr Offer:** The parliamentary assistant clearly indicates the parting of ways, because the parliamentary assistant refers to part-time and full-time workers as being distinguishable here—

**Ms Murdock:** As being what?

**Mr Offer:** As being a distinguishable area than what appears here because—

**Ms Murdock:** This has nothing to do with part-time/full-time. This has everything to do with—

**Mr Offer:** You brought up the example.

**Ms Murdock:** You brought up the example, Mr Offer, not I.

**Mr Offer:** All I am saying is, you made the assertion that it's different in a CAS situation because there are lawyers in the CAS who are doing something different than the other workers, and that isn't the case for full-time and part-time workers.

**Ms Murdock:** Not necessarily.

**Mr Offer:** And I'm saying, why don't we let the full-time and part-time workers make that decision, as opposed to some people in a legislative committee at Queen's Park? 1730

**Ms Murdock:** The board makes the decision. I've made this point before. It's the board that makes the decision as to the composition of the units.

**Mr Offer:** I think it's shameful.

**Mrs Witmer:** I'd like to move that we vote.

**Mr Turnbull:** Just a comment that I would make: This is very important legislation. All parties, while we disagree on the direction we should be going in, understand the significance of this. I think it would be more appropriate if we could be moving on more quickly on all of the clauses so we can get through it in committee.

**The Chair:** Point well made, sir.

**Ms Murdock:** It would be nice.

**Mr Turnbull:** I think it is very, very important that we all reflect upon that and get on with this, so I would propose that we put the motion.

**The Chair:** Thank you, sir, for that comment.

All those in favour of Ms Witmer's motion, please indicate. Opposed? Motion is defeated.

Ms Witmer moves that subsection 7(2) be struck and the following substituted:

"Members of professions

"(4) Subsections (4.1) and (4.2) apply with respect to employees who are entitled to practise one of the following professions in Ontario and who are employed in their professional capacity:

"1. Architecture.

"2. Dentistry.

"3. Engineering.

"4. Land Surveying.

"5. Law.

"6. Nursing."

Alternative 3—

**Mrs Witmer:** Motion to defer.

**The Chair:** Thank you.

Ms Witmer moves that subsection 7(3) of the bill be struck out.

**Mr Offer:** Point of order: When you ask for this to be struck out, apart from asking for a motion for it to be struck out, can you not just speak against it? Is that also not permissible? Because I didn't bring forward amendments on particular sections that I wish to speak against.

**The Chair:** The position the Chair takes is that when it is a whole section, then it isn't necessary to bring a motion; one merely votes against it when considering the bill clause-by-clause. But since this is a portion of that clause, it's necessary to bring an amendment.

**Mrs Witmer:** This amendment would maintain the present requirement that guards be represented by a trade union that represents guards exclusively. This is one of about 80 amendments that the PC Party has brought forward for discussion during the Bill 40 clause-by-clause analysis.

As we know, there was much discussion regarding the representation of guards during the five-week debate we had. Some of the points that were raised during the discussion are certainly worthy of our reconsideration at this time. The international union, the United Plant Guard Workers of America, opposes the government's proposal to eliminate section 12 of the act, which would allow security to be placed in a bargaining unit with non-guards and would allow unions which represent non-guards to represent security guards.

As security guards working in the field, their argument was that a conflict of interest between their duty to observe, to monitor and to report misconduct by other employees could occur in order to protect their employers' property, and their allegiance to their union brothers and sisters would arise if they were placed in the same bargaining unit as non-guards or if they were to be represented by the same union as non-guards. So that was certainly one of the concerns raised by the international union, the United Plant Guard Workers of America.

We heard many other concerns expressed by other people about the need for a trade union to exclusively represent guards. What's happening is that the definition of a security guard in the act is changed from a person who protects the property of the employer to one who monitors other employees. Second, there is the belief that the legislation does not recognize that monitoring other employees automatically gives rise to a fundamental conflict of interest that precludes the same union from representing both groups of employees, especially when both groups are employed by the same employer.

Another concern we heard during the hearings was the fact that, as we know, security guards are routinely called upon to protect employer property and enforce employer interests. Whether placed within the same or a separate bargaining unit, represented by the same trade union, security guards would fall prey to the inevitable pressures from their fellow employees, thereby undermining the confidence demanded of these relationships.



We also know that security guards are called upon to protect employer property during a strike or lockout. If the security guard refuses to cross a picket line put up by employees in the same trade union, employers would be deprived of an essential service. Further, security guards are unlikely to protect the employer's property with the required amount of detachment if the striking employees are represented by the same trade union.

Furthermore, the bill only provides for the placement of security guards who monitor other employees in a separate bargaining unit. The issue of what constitutes monitoring and how much time guards must spend monitoring other employees before the board will consider placing them in a separate union is going to result in protracted litigation.

We also heard from people who appeared before us about other reasons why guards needed to be exempt. We heard from the American Society for Industrial Security that there are a number of enforcement protections provided by their members. They check for drugs and alcoholism in the workplace and they ensure safety in a number of locations. They have on occasion had need to see which employees are necessary for checks and to ensure that certain standards are maintained by all employees within a facility. They strongly believe that, under Bill 40, this could create a very difficult labour-management relationship should all security practitioners at one location be unionized and under the current legislation be grouped in with their brother members locally.

There is also a concern—and this concern, I think, needs to be given some serious consideration—that Bill 40 could cost this province as many as 10,000 jobs. Why? Because there is a belief that the industry must provide an independent security force. Under Bill 40, which allows for unionization of the security force by the same union that has unionized the workforce, there is no autonomy or independence, and I've made reference to this. So customers are already asking now, because of the potential impact of Bill 40, "If you cannot supply independent security officers, what is their value?"

If they cannot have independent security involving people, the alternative is going to be that they are going to turn to electronic systems. Do you know that the sophistication of off-site monitoring already allows a Dallas, Texas, security company to monitor a plant in Ontario, with the alarm responses supplied by use of police at taxpayer expense? Ironically, what Bill 40 is doing is advancing remote technology over jobs at the direct cost to the safety and security of people and property in Ontario.

So I repeat again, because of this, Bill 40 has the potential to cost us 10,000 jobs—that is the reality—if we do not maintain an independent security force. That is why it is absolutely essential that the NDP government supports the amendment which would maintain the present requirement that guards be represented by a trade union that represents guards exclusively.

1740

**Mr Offer:** I will be supporting this motion. In fact, I had anticipated all that would be necessary was to speak to

the particular subsection and vote against it. It's an issue which came before us during our deliberations in the public consultation phase almost daily. Certainly, we've heard a great deal of information around the whole issue of security guards. We heard not only the issue of technology which Mrs Witmer has alluded to, but I believe we heard that very late in the public consultation hearing.

We also heard—I don't know if it ever became part of the public record—that as far as the labour relations board is concerned, a person who guards property is not deemed to be a security guard. I believe that's the distinction the labour relations board has made with respect to security guards: that the exclusion which now exists in the act applies to people who monitor other individuals and does not apply to people who exclusively monitor property. I believe that is something which ministry officials conveyed to myself.

It's important that we recognize that this is not an issue about whether security guards should or should not be part of a union. They can now be part of a union and in fact many are part of a union. The issue is whether it should be exclusively a security guard union as opposed to security guards being part of another union such as the Steelworkers.

I think the argument we heard from many in the security guard industry was that no matter how the legislation is written, in their opinion there is an inherent conflict of interest. That's what they said, and those are the people who are actually doing the work. They said: "We are in the business of monitoring employees. For us to be part of the same union as the people we monitor, in our opinion, is a conflict of interest. It is uncomfortable. It is unnecessary."

The question we have to ask ourselves is, are we going to listen to the security guards that came before the committee? They said: "We monitor. We search employees. We do what is our obligation to do, and for us to be in the same union as them is for us, in our opinion, a conflict of interest." They're uncomfortable. They think it will have an impact on the way and the manner in which they do their jobs.

So I just sit back and say I've never had the opportunity of acting as a security guard, but I'm going to listen to the people who have for many years. They think it's a conflict. They've been operating very happily, thank you very much, under the present legislation. Many of them are already unionized, but they are unionized in their own union. And there they get, in their opinion, the aspects that come towards being unionized but also they're able to keep a distance from the people they are supposed to monitor.

I think we should be giving, very simply, some weighty consideration to what the people who are doing the job have told us. So I am in favour of the status quo. I am in favour of security guards if they wish to be part of a union but a guards-only union. I give strong consideration to the people who came before us and said: "We are uncomfortable. We will be, in our opinion, in a conflict position. It doesn't matter what the words on the paper say. This is all academic. We're out there searching individuals."

We've also heard at times that this is the only jurisdiction that has this type of exclusion. But in response to that we have heard: "Check out what happens in the other

areas. Check out what happens in security guard situations in strike position and you will be very surprised to see that it is easy to say other jurisdictions are different. The fact of the matter is, it is clear they are different and they're all trying to get around, and do get around, that difference." That's what we heard from the security guard industry, that it isn't enough and it isn't sufficient to say, "We're the only province that doesn't do it." I think it's clear that all the other provinces should be following this particular situation to keep a guards-only union.

I think it's clear that what we heard was that in the other jurisdictions for which there isn't that exclusivity, there are ways and methods of getting around that. Why? Because difficulties arise. What are those difficulties? Inherent conflicts of interest. These are the people who do the job. These are the people we should be listening to. We have an opportunity to do that. We have an opportunity by saying to subsection (6) of this particular bill: It is repealed, the status quo is reinstituted, that which has been working will continue to work, we will not put those who are involved in the operation of security guards who do not now feel they are in a conflict position in that and we will take away that subsection. We will take away the concerns that they sort of felt.

I believe there was a person from the Steelworkers. I believe the record will show that a person from the Steelworkers came before this committee and said that the day Bill 40 is passed, there will be a campaign on by the Steelworkers to unionize steelworkers. That was an announcement that was made.

**Mr Hope:** To unionize steelworkers?

**Ms Murdock:** Security guards.

**Mr Offer:** Security guards. That the Steelworkers union will in fact go on a campaign to unionize security guards. I believe that caused a great deal of concern within the industry. I believe it prompted more people from the security guard industry to come here and say: "Listen, you will be putting us in a conflict situation. It isn't a question of to be or not to be unionized. We are unionized, but we want our own union. We want one which is clear and free from the people we have to monitor." We can do that. We can listen to the people. We can repeal that part of Bill 40 which institutes this, without question, conflict position. We can reinstitute the status quo which has worked in this province.

1750

**Mr Ward:** I would like a recorded vote on this issue, because I think it's important. The 20,000-odd number of security guards across Ontario have become aware of who supports their ability to join a union of their choice and who supports a continued restriction on their ability to join a union of their choice. I'm requesting a recorded vote.

**Ms Murdock:** If I might comment on why I'm not supporting this, just basically, I actually listened to everything that was said here today. True, the argument about the right to join a bargaining unit of their choice in every other jurisdiction, including federal, exists elsewhere in this country. New Brunswick is a little bit different, and basically our provisions will follow more along that line.

In that, if I choose to be a security worker I can, under this provision, choose to join a union of my choice. But if the board feels there is a conflict of interest or a perceived conflict, or if I'm monitoring other co-workers, then the board can make the determination that I should be separate. That is still there, so for those employers who did indicate some concern about a possible conflict of interest or lack of protection of their property, that section still allows for those security guards to be separate and apart.

The board, then, can place guards in separate bargaining units if monitoring is the main function of their job. So I don't see how this is removing the choice that Mr Offer has stated.

**Mr Turnbull:** I move that the question now be put.

**The Chair:** There being no further debate—there's a call for a recorded vote—all those in favour of Ms Witmer's motion please indicate. Keep your hand raised until your name is called.

**Ayes—3**

Offer, Turnbull, Witmer.

**Nays—5**

Hayes, Hope, Klopp, Murdock (Sudbury), Ward (Brantford).

**The Chair:** That motion is defeated.

Mrs Witmer moves that section 7 of the act, as set out in section 8 of the bill, be struck out.

You're so moving, as I understand it.

**Mrs Witmer:** Yes, I would so move that amendment to delete section 8 from the bill, which refers to the combining of bargaining units.

**The Chair:** Mrs Witmer, are you moving an amendment to this motion or are you moving this motion?

**Mrs Witmer:** I'm moving that motion. The intent is that we would have an amendment to delete section 8 from the bill.

**The Chair:** Yes. So you're dealing with all of section 8 of the bill.

**Mrs Witmer:** That's right.

**The Chair:** That's out of order. Sorry, and again, we understand that.

Mrs Witmer moves that subsections 7(1) and (2) of the act, as set out in section 8 of the bill, be struck out and the following substituted:

"Combining bargaining units

"(1) On application by the employer or trade union, the board may combine two or more bargaining units consisting of employees of an employer into a single bargaining unit if the board finds that a particular labour relations problem exists that would be solved by combining the bargaining units."

Go ahead, Mrs Witmer. That's your alternate 3.

**Mrs Witmer:** That's right. The intent here is to restrict—

**Mr Hope:** Why have we got so many alternates?

**Mrs Witmer:** As I said, the PC Party of Ontario has attempted to listen to all the presentations that were made



this summer and has attempted to reflect the views of the presentations that were made. The intent of this amendment is to restrict combining to existing bargaining units. Combinations would not be limited to situations involving only one trade union; combinations would be triggered by a finding that a particular labour relations problem exists that would be cured by redefining the bargaining units.

The rewording of subsection (1) would ensure that the board can only exercise its consolidation power when it determines that a particular labour relations problem exists that would be solved by redefining the bargaining units. So the solution can only be used when there is an identifiable problem. Now, the removal of subsection (2) will restrict combining to existing bargaining units. It will also allow consolidation where an employer has more than one trade union representing employees.

School boards are concerned that the new consolidation powers will benefit only trade unions and will not allow employers to seek the enlarged bargaining units because of the form of the trade union organization. As you know, a school board can have six or seven trade unions representing its employees. Labour boards in other jurisdictions which have the power to consolidate have exercised their power most often in cases where different trade unions have obtained bargaining rights. The Canada board has successfully used its consolidation power to reduce a multiplicity of bargaining units and required employees in the consolidated unit to choose between incumbent units.

I would then move this amendment.

**The Chair:** Thank you. Any other discussion?

**Mr Hope:** I've just got a particular question around "particular labour relations problem exists." What's your termination and definition of that?

**Mr Offer:** No, it's her.

**Mr Hope:** Oh, I know. I'm just looking at you, Steve. I don't have my glasses on, so I can't see that well anyway, so it's okay.

I'm just curious about your definition of "labour relations problem exists." It seems like you're focusing your attention on the bargaining units being the problem. You don't know if it's the employer's problem or the employees' problem, but the way you've got it labelled here, you're labelling it as the employees' problem that the labour relations problem exists. I'm just curious why you worded it that way. As I told you, Steve, I don't have my glasses on, so I can't see you. I just wanted some clarification. You never know; I could vote in favour of it.

**The Chair:** Any further discussion?

**Mr Turnbull:** I'm going to ask that the question be put.

**The Chair:** That question's there. Mr Offer, did you have something that was relevant to that question posed to the PA?

**Ms Murdock:** No, it wasn't posed to me; it was posed to Mrs Witmer.

**Mr Offer:** It wasn't posed to the PA; it was posed to Ms Witmer.

**The Chair:** Go ahead.

**Mr Offer:** I must say, I had the same question.

**Mr Hope:** Really? It must have been that telepathic communication that was going on.

**Mr Offer:** It just seems that in this amendment the combination is premised on some sort of labour problem existing, and I sometimes feel that a combination of units might take place not because of a problem but because it is more efficient, that there are certain areas and issues that can be better represented and better understood.

I hear the position in the amendment put forward by the Progressive Conservative critic, but in fairness, I don't recall hearing that concern brought forward. I heard a concern with the legislation, the legislative aspect, but I didn't hear it as being able to be rectified in this way. I will be moving an amendment which I think will address what I heard, but I don't think I want the combination of units to be premised on some "labour relations problem." Who is to determine that a problem exists? Who makes the decision? A problem for one may not be a problem to the other. I just feel that it's too imprecise for me, in conscience, to support.

**The Chair:** All right. Ms Witmer, you can choose or choose not to respond to that.

**Mrs Witmer:** I'm certainly prepared to respond to that. However, I would appreciate the opportunity, given the hour, to respond to that when we reconvene on Tuesday.

**The Chair:** Yes, ma'am. It's 6 o'clock. We are adjourning until—go ahead, Ms Murdock.

**Ms Murdock:** Could we please have this room a little warmer on Tuesday?

**Mr Offer:** The Amethyst Room is warm.

**The Chair:** Well, there may be room for debate on that. We're adjourning until Tuesday at 3:30 or at the end of routine proceedings. Thank you, people.

The committee adjourned at 1800.

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**\*Hayes, Pat (Essex-Kent ND) for Mr Klopp**

**\*Hope, Randy R. (Chatham-Kent ND) for Mr Dadamo**

**\*Klopp, Paul (Huron ND) for Mr Wood**

**\*Ward, Brad (Brantford ND) for Mr Waters**

**\*Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan**

**\*In attendance / présents**

#### **Also taking part / Autres participants et participantes:**

Kovacs, Jerry, legal counsel, Ministry of Labour

**Clerk pro tem / Greffier par intérim:** Decker, Todd

#### **Staff / Personnel:**

Spakowski, Mark, legislative counsel



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## Legislative Assembly of Ontario

Second session, 35th Parliament

# Official Report of Debates (Hansard)

Tuesday 13 October 1992

## Standing committee on resources development

Labour Relations and  
Employment Statute Law  
Amendment Act, 1992

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Journal des débats (Hansard)

Mardi 13 octobre 1992

## Comité permanent du développement des ressources

Loi de 1992 modifiant des lois  
en ce qui a trait aux relations  
de travail et à l'emploi



Chair: Peter Kormos  
Clerk pro tem: Todd Decker

Président : Peter Kormos  
Greffier par intérim : Todd Decker

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 13 October 1992

The committee met at 1532 in committee room 1.

LABOUR RELATIONS AND EMPLOYMENT  
STATUTE LAW AMENDMENT ACT, 1992  
LOI DE 1992 MODIFIANT DES LOIS  
EN CE QUI A TRAIT AUX RELATIONS  
DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

**The Chair (Mr Peter Kormos):** It's 3:32 and routine proceedings have been done and gone, so we will move right along.

**Mrs Elizabeth Witmer (Waterloo North):** I had been asked at the end of the discussion on Thursday to speak to the issue concerning a particular labour relations problem. As you know, we had introduced a previous amendment where we wanted to eliminate the combining of bargaining units. We're very concerned about that proposal.

What we're saying now in this second alternative is that we want to restrict combining existing bargaining units and we want to talk about this identifiable problem. What we mean by this is: If there is a problem concerning the functioning of a business, then if the combination of the bargaining units is going to improve the functioning of that business, we would see that as overcoming that problem.

Also, another problem that we would be referring to would be: If it's the employees' wish to combine, then we could support the combining of the existing bargaining units. Those are the type of labour relations problems that we were talking about. I hope that helps.

**The Chair:** You wanted to debate this?

**Mr Steven Offer (Mississauga North):** I just wanted to try to get my mind in sync with where we are in the bill. We're at section 7.1 of the bill, dealing with the combining of bargaining units? I think I have an amendment to that which follows this.

**Mrs Witmer:** You do.

**Mr Offer:** Thank you. I just wanted to get a clarification.

**The Chair:** There being no further debate, all those in favour of Ms Witmer's motion? Opposed? The motion is defeated.

Mr Offer moves that subsections 7(2) and (3) of the act, as set out in section 8 of the bill, be struck out and the following substituted:

"Representation vote

"(2) The board shall combine the bargaining units only if a representation vote is taken and more than 50 per cent of the ballots in each of the separate bargaining units are cast in favour of the trade union.

"Secret ballot

"(3) The representation vote must be taken by secret ballot and must be held within 30 days after the date on which the application is made under subsection (1)."

Go ahead.

**Mr Offer:** I'd like to speak to the motion which we are moving, hopefully to be adopted by the government members. I think the principle underlying this amendment is very much the same as the motion that dealt with the part-time and full-time worker consolidation motion. What was the principle? The principle underlying both motions—but the one I will speak to is with respect to combining bargaining units—is that if individuals in each of the bargaining units feel that they wish to be combined into a single bargaining unit, then they can if there is a secret ballot vote and the vote is held within 30 days after the date upon which the application is made.

There are other sections to section 7, which we will deal with, but what my motion is attempting to accomplish is this: There will be, in my opinion, the situation where, firstly, there are existing bargaining units, and secondly, an application is made to combine those units. I do not have any problem with the application for combination; that, I can understand, may happen some time. I don't think that anyone here can, in fairness, deal with all possible scenarios as to when and where and how that may take place, but I think we can all see that it will. So if we take it as a given that there will be an application for combination of bargaining units, the essential issue which we must deal with is how that is accomplished. Most of my comments will be directed to how that is to be accomplished.

Clearly, under the legislation as it now exists, after the application is made, it is dealt with by the labour relations board, without any input from the employees of each of the units. There is, in fact, no necessary notice to those employees of an application for combination. There is no provision which mandates each employee to be given information not only of the application for combination but also as to what it means, why it's taking place and what his rights are as a result of such an application. I don't believe that's good enough.

I reiterate, because I have found it is absolutely essential to reiterate, that I'm not opposed to combinations of units taking place, but I do believe that if they do take place, there is the necessity for the employees of each of the units to have a say as to whether they do or do not wish to be part of a combined unit.

1540

Where does this idea come from? It comes from some of the representations we heard. We have to recognize that we're not talking about just an application for certification; we're talking about where there are in existence two already organized units. We heard in our hearings that in

some instances a bargaining unit does not have the same interests as another unit. It isn't that one of those interests is more important than the other, but it does mean to say that in some units there may be a different priority that is placed on the interests. Some may be wages, others may be pension benefits, still others may be job security. These are all important issues, but what I heard in the public hearings is that some bargaining units, though probably having all of those interests, place a higher priority on one than another.

I think that is something we can all understand and I hope we can all agree with, because if we agree that there are some units that do have a different sense of priority on those issues than others, then it means we cannot allow the board to make a decision without hearing from the employees.

This section of the bill really does exclude participation by the employees. My amendment would ensure that on any application, a vote must take place. I'm not looking for a low threshold to trigger a vote; I'm not looking for any threshold. I'm saying an application for combination triggers a secret ballot vote. The end result of a secret ballot vote is that there must be a majority in each of the units wishing consolidation before it can take place. There may be other factors that the board will have to take into account, but it seems to me it should have no right to take any of the other factors into account until each of the workers in each of the units agrees that consolidation is something they want.

It's not enough to say that we trust the board to make these decisions on behalf of the workers. I don't think that's good enough. I recognize the board has to take into consideration certain criteria, it has to be sensitive and aware as to what consolidation means, but my amendment is designed to say that it cannot take those into consideration until a majority of employees in each unit in essence asks it to do that.

In our public hearings I believe there was a representation by a union, a person who represented workers, but I don't think it was a large union. It was a smaller union, a smaller unit of workers, but unionized none the less. He expressed the concern that the interests of the men and women he represents might be different from the interests of another unit which would form part and combination of. I think that was an important submission, because it brought forward the point, very nicely and very sensitively, that we should be giving in this legislation the right to workers to make the decision in the first instance about whether they wish a combination of units to take place.

My amendment would allow that. It would be a secret vote, I don't think we ever heard in our hearings a concern in this area, of any intimidation or coercion or anything of this nature, but I believe a worker just feels freer when he or she casts a vote yes or no in the privacy of a booth.

The reason I bring forward the amendment is that I've had reason to look at Bill 80. We know that Bill 80 carries with it five conditions. It's a bill which has been brought forward by the Minister of Labour. It is referred to as a disaffiliation bill; there are those who say that is a proper characterization of the bill and, in fairness, there are others who say it isn't. But one of the areas the bill does address,

no matter what one's position on the bill is, is that in certain circumstances it will allow the provincial organization of an international union to break away or disaffiliate from its international. That's what it would allow. We all recognize that that's a possibility under Bill 80.

But when you read Bill 80, it is interesting to see some of the principles.

First, it speaks of a vote that's necessary before disaffiliation or breaking away will be allowed. In other words, before a provincial representative unit can break away from its international, a vote has to take place. What type of vote under Bill 80, as brought forward by the Minister of Labour at the end of June 1992? Guess what? A secret ballot vote. When is that secret ballot vote triggered? My goodness, isn't that strange? When there is a majority request.

There are some who attach certain intentions to that who are very critical of the Minister of Labour. I don't say the ministry. I'm very specific: I say the Minister of Labour. There are those who are very critical of the Minister of Labour steadfastly refusing in Bill 40 to allow secret ballot votes, to allow the majority of workers to decide, while at the same time in Bill 80, for other reasons, allowing a secret ballot vote and allowing a majority of workers to decide. There are a number of people who have some familiarity and history with labour relations in this province who are extremely critical of the Minister of Labour. I won't go further in terms of the adjective given, other than to say "critical" of the actions of the minister, but we all know it goes much further.

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They are asking: Why are the principles in Bill 80 not brought and carried through in Bill 40 and vice versa? Why is there such an apparent inconsistency on the part of the Minister of Labour? No one speaks to me on the part of the Ministry of Labour. No one speaks to me about the policy that has been dealt with and how it's been dealt with by ministry officials. They understand that. The criticism is directly put at the feet of the Minister of Labour.

This is an issue which I believe is in many ways much larger than either Bill 40 or Bill 80, because there is clearly a distinction in principle as to who, why and when workers' rights are recognized and listened to in this province.

My amendment cuts through all of that criticism. It says there are times when a combination of existing units may indeed take place. Again I say that we can't anticipate when and where. I think we can understand that there in fact will be that type of application, but when that application is made, there must be a majority of workers in each unit saying yes to consolidation; if there is not a majority of workers who democratically exercise their right and freedom to choose, then no consolidation takes place. If you cannot get a majority of workers in each unit, then there is a reason for that: It is nothing other than the workers deciding that their interests in one unit are different from workers' in another.

So I am bringing forward this motion, this amendment to the bill, in order to give to the workers of this province who are already unionized and wish to combine one to the other the right to freely exercise their choice, the right to express their opinion as to yes or no. If you don't have



50% in each unit, then it's no. If you do, then the board must take into consideration other factors so that the combination is done in a balanced way, having and giving real understanding to both employees and employers.

My amendment is directed to the rights of workers, allowing them to cast a vote. The government, the bill, are taking that away. It is leaving it in the hands of the Ontario Labour Relations Board—not good enough.

**Ms Witmer:** I'd like to register my concern at this time. This is now day five of discussion; we only have eight days, because of time allocation. I would like to indicate at this time that the Ontario PC Party has attempted to listen to people during the five weeks of hearings. We have come up with more than 80 substantive amendments to Bill 40 and, unfortunately, if we continue to proceed at this pace, there will be no opportunity for us to discuss with the members of this committee all the concerns that have been raised by individuals and groups in this community. If I'm going to do my job effectively as an opposition critic, we need to be given that opportunity. Obviously, we're going to have to either limit our remarks or not deal with issues such as replacement workers and third party picketing, all very crucial issues to people in this province.

I suggest that if we're really going to respond to the concerns of people, we're going to have to proceed at a quicker pace; otherwise, the five weeks of hearings were for naught.

**Mr Offer:** On the same point Ms Witmer has brought forward, there are two areas that I'd like to correct. Yes, we've been allocated eight days. The first day was very short. I don't think we started the day until 4 or 4:30, and we had to adjourn, of course, by 6.

The second point I make to Ms Witmer, in agreement with her concerns, is that if we read the motion the government passed, the eighth day effectively ends at 4 pm. We cannot start the eighth day until 3:30 in the afternoon. I just happen to have the motion before me. It says: "At 4 pm on the last day on which the committee is authorized to consider the bill clause by clause, those amendments which have not yet been moved shall be deemed to have been moved and the Chair shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill."

So we're not dealing with eight days; in fact, we are dealing with not more than six, and each of those days, under our rules and by tradition, starts at 3:30 and doesn't go past 6.

From day one, I have indicated my grave concerns that there will not be sufficient time to deal with the bill. I would like to put that on the record. There are important areas that have to be addressed, have to be discussed. This time allocation closure motion by the government stops us from doing that. Six days to deal with so many sections and so many amendments is an aberration of the democratic process.

If anyone is suggesting that we should deal with these sections on the nod, in other words, read them in, "Are you in favour or against?" and then just go on, I would like to

hear that. I would like to hear any member of this Legislature, of this committee, who's saying these bills and these sections shouldn't be discussed. They affect many people in this province, and I invite anybody to say that these sections shouldn't be discussed, rather on the nod. It's not the democratic process, it's not the parliamentary process and it's not the thing we were elected to represent.

If you think we are just going to, on the blink, say yes or no without indicating our grave concerns with some of these sections, I think that's a forum that isn't in this province or in this country, and never has been. If you think we are going to chart some new ground that bills get passed on the nod without voicing our thoughts, our opinions, our concerns and, yes, sometimes our support, I take strong exception to that.

**Mr David Turnbull (York Mills):** While I have to agree with what Mr Offer is saying, I still have to point out that there is no suggestion of just reading them in and glossing over it. I think it's despicable that the government isn't giving the appropriate amount of time to discuss a bill which—I don't think it's even arguable—is the most important piece of legislation that has been brought by this government since it has been in office—

**Mr Offer:** Absolutely.

**Mr Turnbull:** —and probably in the whole of your term will be the most damaging piece of legislation brought before any legislature in North America. It deserves more time, but we have a government that resorts to highway robbery. We know that they stick us up and say, "This is all you're going to get." Nevertheless, we have a responsibility, as the opposition, to get on and show what we would do.

The Conservative Party, as is typical for the Conservative Party, has the majority of well-thought-out amendments. We can go along with a lot of Liberal amendments and I'm not complaining about the thrust of these. But I do believe that a lot of the comments, with the greatest respect, Mr Offer, from you and from the Liberal bench, are of a highly repetitive nature. I've heard the same thing over and over again.

**1600**

I agree with what you're saying mostly, but please, let's get on with it and get on with discussing the whole bill, because I really intend to tear into this government when it gets into the House and I won't hold back on the debate at that point. But I do believe it's important to give an airing or the light of day to the amendments that we have prepared, which we believe, given the awful nature of this bill, at least will improve it.

**Mr Offer:** I'm compelled to respond. I think we recognize how this issue came to the floor and I recognize how some are ready to tear into the government when it hits the floor. The fact of the matter is that you don't have any time to do it. There are two days. The government has already dictated that. To me, since I was first elected in 1985, dealing with a variety of bills, it is at the clause-by-clause stage in committee where we attempt to make the bill better. That's what the committee stage is all about.

The legislative chamber's time is valuable time. They're not going to give us 20 or 30 legislative days to deal with this bill. There are other bills that require second-reading debate, yes, and some committee of the whole. It's the committee stage where you deal with fine-tuning, with improving pieces of legislation. If I am hearing that both the NDP and the Conservative Party are saying, "Let's do away with that part," then let them put it on the record.

**Mr Turnbull:** I have to take strong objection to that suggestion by the Liberals. The Liberals have seen fit to have only one person at this committee throughout these clause-by-clause hearings, and the obstructionist attitude, to suggest that we don't want to have the airing or the light of the day, is ludicrous because it's our party that is doing more work than your party. We're trying to improve this dreadful piece of legislation because it's going to lose jobs, and that's what we're concerned about.

**Mr Len Wood (Cochrane North):** Create jobs.

**The Acting Chair (Mr Noel Duignan):** Can I remind the members of the committee that we are discussing Mr Offer's motion? We've somewhat digressed from that.

**Mr Turnbull:** The whole point is that we want to move the process along and not have a monologue, where everybody's just about asleep from Mr Offer's sermons from the mount.

**Mrs Witmer:** In an attempt to move things and make sure that we have a chance to discuss all the amendments that have been proposed, I do agree with the Liberal motion. I feel it's extremely important that we do take into consideration, if you're going to combine separate bargaining units, that the wishes of all employees are considered. I've always believed very strongly, as has my party, that there is a need for a secret ballot, because we are very concerned that Bill 40 does infringe on the rights and freedoms of individuals. What Mr Offer's motion will do is make sure that there is a secret ballot on the issue of combining bargaining units. So we would certainly support this particular amendment.

**The Acting Chair:** Any further discussion?

**Ms Sharon Murdock (Sudbury):** Just to respond to the comments by Mr Offer on this section, like Mr Offer, I sat through all the hearings for five weeks. With the exception of the Christian Labour Association of Canada, which Mr Offer mentioned—he didn't refer to it by name but that was the union you were talking about, I believe.

**Mr Offer:** No, it wasn't.

**Ms Murdock:** Well, that's the only one I remember specifically directing its mind to this aspect. I heard groups talk about representation votes at certification and I heard groups talk about a strike vote, but in terms of representation votes for a consolidation of unions, I would point out that the unions already represent the groups, that their membership tell the union leadership what they would like to do and whether they agree with it.

Having said that, then of course we're not in support of this amendment. However, I want to respond, and very briefly, because I know Bill 80 has nothing to do with this Bill 40. Because it was mentioned so lengthily, I feel

compelled to address the points Mr Offer made in regard to my minister, those being the Bill 80 principles. I disagree with Mr Offer very decidedly in terms of those unions that wish to move away from their international, that they must do so with, first of all—he's right that there would be a secret ballot vote at a later date, but it must do it first with the consent of the international union.

Secondly then, decertification under the existing OLRA also requires the secret ballot vote when union members want to decertify from their union. Those two premises are true and have remained true for years. The distinction, I think, here is in terms of a representation vote as between the certification vote and between a consolidation vote. They are not the same thing, and I think the distinction must be made on the record.

**The Acting Chair:** Mr Hayes?

**Mr Pat Hayes (Essex-Kent):** I thought we were voting.

**The Acting Chair:** Sorry. Mr Offer.

**Mr Offer:** I think the parliamentary assistant has referred to two things that I want to make clear on the record, if I'm permitted to do so with these new rules. The first is that I believe you referred to the Christian labour congress—

**Ms Murdock:** Christian Labour Association of Canada, CLAC.

**Mr Offer:** Association. I believe there was another representation made from an individual who represented workers and clearly indicated that there was a concern he had that in the event of a consolidation, there is firstly the concern about there being a unit of workers with a few individuals being consolidated with a unit with a larger number, and that the interests of the group with the larger number are different from the one with the smaller number, and that, as a result, would impact on the workers he represents. That wasn't from CLAC; it was from the Paperworkers and I think it was an important point that was made.

Second point: Again, if I might be able to clarify matters with these new rules of proceeding, if time permits, it's only Hansard that we're responding to, and that is, if you were listening to my comments on Bill 80, my comments were neither in support of nor opposed to the bill. My comments were premised on what in fact is in the bill. There are five issues within the bill, one of which is disaffiliation, and the point I bring up is that the disaffiliation sections carry with them the principle of a secret ballot vote, which has been rejected by the government in Bill 40. It carries with it the principle of majority rule, which has been rejected in Bill 40. The point I make is that there are many concerned that the underlying principles of Bill 80, in similar manner, are different from the principles in Bill 40, a lack of consistency, and there is a great deal of criticism as a result of that.

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**The Acting Chair:** Any further discussion on Mr Offer's motion?

**Mr Offer:** I would like a recorded vote, if that's allowed under the new NDP rules of procedure.



**Ms Murdock:** Excuse me. I'm going to take exception to that too, because I don't believe, as I recall—

**The Acting Chair:** Ms Murdock, through the Chair.

**Ms Murdock:** If you look at the record, we never spoke to this, so the little gibes that are being given are uncalled-for.

**Mr Offer:** I agree with you.

**The Acting Chair:** Thank you, Ms Murdock. Any further discussion on Mr Offer's motion? Hearing none, a recorded vote.

**Ayes—2**

Offer, Witmer.

**Nays—5**

Hayes, Lessard, Murdock (Sudbury), Ward (Brantford), Wood.

**The Acting Chair:** The motion is lost.

The next motion we're dealing with is Ms Witmer's motion. That is section 8 of the bill, subsection 7(2.1) of the act.

**Mrs Witmer:** I move that section 7 of the act, as set out in section 8 of the bill, be amended by adding the following subsection:

"Decertification

"(2.1) If the board combines bargaining units, the employees in any of the formerly separate bargaining units may apply to terminate the bargaining rights of the trade union on behalf of the employees in the formerly separate bargaining unit."

The intent of this amendment is to provide for a decertification application by a group of employees that has been consolidated into a larger unit. It supports our concern for freedom of expression and our concern that much of Bill 40 seems to be directed at enhancing union power, however, infringing on the rights of the individuals. We feel if employees were given this right, it certainly would be in their favour.

What happens, we believe, is that it's important that employees who are being organized by a trade union are entitled to know what bargaining unit they are being asked to join. Once they're combined with one or more other bargaining units as part of the certification process, this subjects them to a future bargaining structure without their consent, so they lose their freedom and their wishes are not taken into consideration. If the government insists on proceeding with section 8, as it has indicated it is going to do, we believe very strongly that employees should be allowed to submit an application for decertifying out of the larger consolidated unit if the new bargaining structure does not represent their interests.

If employees are not given this type of protection we are suggesting they be given, local autonomy is going to be totally lost and individual employees are going to lose total control over their destiny. It's for that reason, because of our belief in freedom and democracy, that we are putting forward this particular amendment at this time to allow all employees an opportunity to freely express their wish to decertify, if that's in their best interests.

**Mr Offer:** I'd like to start by asking a question on this amendment. Does this amendment take effect after a consolidation has taken place?

**Mrs Witmer:** Yes, after.

**Mr Offer:** And what this would allow is for employees of a larger unit to carve themselves out of the larger unit?

**Mrs Witmer:** It would probably be a smaller unit that has become part of a larger unit.

**Mr Offer:** I understand that, but I'm saying that you might have a unit of—we'll put numbers in—15 consolidated with a unit of 35, so you've got 50 now and they're now one unit. We now have a unit of 50. This amendment would allow some workers, not necessarily the 15 or the 35, but some, to carve themselves out of the 50?

**Mrs Witmer:** Yes.

**Mr Offer:** I guess my question is, what are the criteria to do that? How are they going to be able to work in the workplace? I just don't know. If there's no limitation on the workplace strictures, how do they go to work? How does it work?

**Mr Wood:** They don't work. They stay home.

**Mr Offer:** I hope you understand, because I think it's an important amendment. If we now have a unit of 50 and we're now saying that 10 people can carve themselves out, does consolidation have to be a precondition? I just don't know what that means.

**The Chair:** Does anybody want to answer that? You don't have to if you don't want to.

**Ms Murdock:** Mr Offer has stated our concern on this, because it's not a certification or a representation issue. First of all, it's working on the premise that it's the individual locals of the same union. It has to be made clear here: Under Bill 40, the consolidation can only occur if it's the same union. To use an example of CAW, for instance, if two CAW locals consolidate, those individual locals must decide that at their individual membership meetings, because it would radically change their constitution if they were to join into one bargaining unit. This is not done in isolation, that some higher players make a decision that they're going to do this and that the membership has absolutely nothing to say on it, because that's the sense I got when the explanation was being given.

Secondly, as Mr Offer has pointed out with his question, once they are consolidated and then become the bargaining agent with the employer for that group of 50, for example, the way I'm reading this motion, they would have to be one of—"the formerly separate bargaining units may apply to terminate the bargaining rights."

Therefore, it wouldn't be just any group of 10; it would require it to be one of the formerly separate bargaining units which have voted for consolidation. I just can't see how this would work at all, and we will not support this.

**Mr Offer:** Can I just ask a question based on that? If we're thinking about it as being one of the former units that can carve itself away, they haven't had the opportunity to vote for consolidation. This would allow the unit that used to be in existence to vote to break away.

The amendment is probably less effective if the workers had been given the right to vote yes or no in the first place. But if the workers, after not being given the right to vote yes or no in the first place, are given the right to vote no in the second place, they at least are allowed to express an opinion. I have a concern that there's no time frame for this.

**Mrs Witmer:** Just to clarify, it doesn't refer to any group of workers; it refers to a former bargaining unit. Our concern is that throughout this entire process of combining bargaining units, individuals are not being allowed an opportunity to express themselves through a secret ballot vote. The individual wishes of employees are not being taken into consideration, so we believe that once consolidation takes place, people need to have an avenue to decertify. That's what we're suggesting here could happen if there is a former bargaining unit that's not happy with the consolidation that's just taken place into a larger unit.

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**Mr Offer:** Just before I cast my vote yes or no on this, even though there's been a consolidation, there would still be in one's mind the preconsolidation application in terms of the units. In other words, you could have only one or the other that used to be in existence carve itself out; you couldn't have some sort of hybrid of, now that they're one, you have 10 and 15 from each unit, or something less than what was there before, carve themselves out. I just don't know.

**Ms Murdock:** This is also working on the presumption that the individual local unions are sitting there and somebody decides for them, without asking their opinion—this is the presumption this is working on—that they're going to consolidate.

**Mr Offer:** That's right, though.

**Ms Murdock:** During law school, when I was there, we looked at contracts and constitutions of different local unions. If you're going to remove yourself from local 123, and local 234 is going to join with you to form a brand new local, 750 or whatever, there is no way that would be done without a meeting and a vote being held within their own constitutional agreement and the agreement the individual local would have. That is not part of this bill, not part of the Labour Relations Act, because it's part of their own constitutional dealings; therefore, this has no appropriateness for the issue.

**Mrs Witmer:** In response to that, that's our concern. It's fine to say that the local union will have a vote and there will be discussion. However, if that is indeed what is going to happen, then why did the government not allow for the opportunity for a secret ballot vote to take place so that the wishes of the individual employees could be taken into consideration? That's not seen to be happening right now, and that's our concern and that's why we feel that employees need to have some local autonomy and some opportunity to express their wishes, so we have moved this particular amendment which would allow them to decertify.

**Mr Offer:** Actually, Ms Witmer just brings up a point. Why didn't the government move on allowing the workers,

by a majority rule in a consolidation, to express their opinions? We heard it in the committee hearings.

**Ms Murdock:** I believe this allows the flexibility of the individual locals to make the determination as to how they're going to run their own operation. The ones I know—of course, I'm dealing with a Sudbury situation where there are fairly large local unions, but I've checked, and all of them deal with secret ballot votes for major decisions that are being made within their own local. That is not to say that all of them do it that way but that it's their right to decide how they're going to make decisions for their own reasons. It is not for any government—I don't care whether it's Progressive Conservative, Liberal or New Democrat—to tell them how they're going to make decisions about their own major movements to wherever they're headed, and that's why it is not included in either Bill 40 or in the Ontario Labour Relations Act.

**Mr Offer:** Hopefully just to finish off on this, it's unfortunate, but Bill 40 flies in the face of what you've said. You said it was not right for the bill to demand that, but I just take a look at section 23, which actually has the type of grievance clause that must be in every collective bargaining agreement. The bill goes on with other examples of things that must be in a collective bargaining agreement: must.

**Ms Murdock:** As you well know, Mr Offer, all of those are things that have been developed with the board over the years. If they aren't already in a collective agreement, then the board will operate on the basis—

**Mr Offer:** The argument could be made that secret votes have also had some discussion. It would certainly be in keeping with any government to insert in legislation that if there is to be an application for consolidation, a secret ballot vote should take place, and this is the way in which it should take place: under the auspices of the Ontario Labour Relations Board. Take it away from everyone, but make it founded on principles of democracy and freedom and secrecy. I think the government could do this quite simply. I think you should call a vote, unless they have any questions.

**The Chair:** As you know, Mr Offer, there are no rules restricting the amount of time that somebody can speak to a matter in committee.

**Mr Offer:** I wish you were here a little earlier, Mr Chair, to hear some things.

**The Chair:** Wishes, mere wishes. Any further debate on this matter? Mr Duignan.

**Mr Noel Duignan (Halton North):** I didn't say a word.

**The Chair:** I'm sorry; I thought you were gesturing. Perhaps you were gesturing.

All in favour of Ms Witmer's motion, please indicate. Opposed? The motion is defeated.

Mrs Witmer moves that subsection 7(3) of the act, as set out in section 8 of the bill, be amended by striking out "or" at the end of clause (b) and by adding the following clauses:

"(d) would interfere with an employer's organizational structure; or

"(e) would reduce employment opportunities."



**Mrs Witmer:** As you can see, we're very concerned about the combining of bargaining units and the very detrimental impact it can have on the Ontario economy and also on the autonomy of the individual employee. This amendment adds additional factors for the board to take into consideration when it is combining bargaining units.

The existing 7(3) instructs the board to consider the factors of facilitating viable and stable collective bargaining and reducing fragmentation of bargaining units. Both of those factors, as you know, do tend to favour consolidation.

This amendment would require the board to seriously consider whether consolidation will interfere with an employer's organizational structure or reduce employment opportunities. We believe that if this amendment is added and taken into consideration when the board looks at combining bargaining units, this will provide some very much needed balance to the bill as to the economic realities that a business encounters.

We believe that Bill 40 unfortunately is skewed in favour of the unions. It's not balanced for individuals or for the employer community. If you were to take this amendment into consideration, it would restore some of the balance that has been lost and would force the board to look beyond what's already being taken into consideration here and to take a good, hard look at the business side of the equation and what the economic realities will be if there is a combination of these bargaining units. I would hope you support this in an attempt to restore balance to Bill 40 and to take into consideration what the employer community has been asking you to do.

**Mr Offer:** I guess we will hear from the government as to whether it will be accepting this amendment. It's one of those things where you just cannot—

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**The Chair:** Perhaps you could put that question to Ms Murdock and abbreviate the whole debate here. If Ms Murdock approves of the motion, there'd be no need, really, to discuss it.

**Mr Offer:** Could you give us some indication of whether the government is prepared to accept this motion?

**Ms Murdock:** Given that we have, as Mrs Witmer stated, heard from many businesses during the hearings with regard to their concerns about significantly different methods of operation and ability to continue operating and that we address that in our motion that's coming up, we will not be supporting this one.

**Mr Offer:** Okay, thank you very much. I note that you do have a motion coming up on this particular area, but I think that we have to continually remember, and in labour relations law and in board applications we have to recognize, that you can't take a look at one section individually, that there is always a folding together of many sections to build the story.

The unfortunate point we are at is that we are trying to anticipate what the board is going to do when we now have a new purpose clause. We haven't had that before.

**Mrs Witmer:** We don't know that.

**Mr Offer:** Ms Witmer has just indicated that we don't know, and she is absolutely right. We can look back and say, "The board has done this, it has acted this way, it has dealt with the matter in this way," but it's always been done with the preamble of the act and without a purpose clause. We now have the government repealing the preamble and inserting a purpose clause within the legislation.

I've said from the outset that I believe that really will shape the direction the board must follow. They will not have discretion. It's not a preamble of principle; it is a very specific purpose. When you do that, you limit the board's discretion in the manner it addresses issues. That's what's happened in the first few sections of Bill 40.

So we come to this section which speaks about board discretion, but we can't talk about what this section says without reminding ourselves that the board is going to be driven in a way that is like never before.

We did hear some very important arguments based on reality, not based on something that's like wisps of smoke. Employers require the board to take into consideration certain factors that are important to them, and this bill doesn't do that. This bill just forwards the board in a very imbalanced manner.

We better think about what the long-term ramifications are. To me, I see this as having a direct impact on investment in the province. There will be those who disagree, but I believe that companies, when they open up here, or existing companies looking to maybe expand here, will have regard to the labour relations board, what drives the board and what are some of the areas in which the board can make decisions and which affect them. If anyone doesn't believe they take those things into consideration, my goodness, then I don't know what more is to be said, except that it will be interesting to hear what the government will be attempting to deal with through its amendments.

I think it is absolutely essential that any opportunity we have in Bill 40 to restore the balance be made. This is an amendment which does attempt to restore balance, in one area only, and that's consolidation.

I can tell you, we wouldn't need a lot of these amendments if the purpose clause itself built the balance. If the purpose clause had the balance that was necessary, then you wouldn't need all of these amendments to try piecemeal, in an ad hoc way, to restore balance. You wouldn't need that for consolidation if there was a preamble which already had that. It would apply to every application.

This is extremely important, not only as to its substance, but also as to how one has to, in a word, battle the purpose clause. We must battle and put up a barrier to the discretion, to the latitude, in one way, that the board is going to be able to exercise and what effect that has on employers in this province. I am concerned about that.

This amendment is one which attempts to build in some balance. I think it would have been not as necessary if two things took place: first, if a restructured preamble were inserted—and of course the (b) part to that is that the purpose clause be taken out—and second, that workers be given the right to choose yes or no. I think that's very important, but we will certainly wait to hear what the government has to say in the area of the consolidation of

units and how it is going to deal with the very real issues brought forward in our public hearings by much of the business community.

**Mr Wood:** Time to vote.

**The Chair:** There being no further debate, all those in favour of Ms Witmer's motion? Opposed? The motion is defeated.

Ms Witmer moves that subsection 7(3) of the act, as set out in section 8 of the bill, be struck out and the following substituted:

"Representation vote

"(3) The board shall combine the bargaining units only if a representation vote is taken and more than 50% of the ballots in each of the separate bargaining units are cast in favour of the trade union."

Go ahead, Ms Witmer.

**Mrs Witmer:** This amendment is very similar to the one that was introduced by the Liberal Party. It is simply adding a new requirement for a vote of all parties concerned who would be directly affected by the consolidation application and that the board would require a simple majority in each of the individual units before such a merger could take place.

If you remember, on August 13 of this year the Canadian Paperworkers Union asked this committee to prepare an amendment that would require a vote of all parties who would be affected by the consolidation application and that the board should require a simple majority of the individual units before such a merger could take place. The amendment before us is one that has been asked for not only by the Canadian Paperworkers Union but also by the More Jobs Coalition, by Inco and by the Ontario Restaurant Association, so there certainly was quite a bit of interest in this particular amendment.

1640

As we've already said, currently there is no provision in the legislation that allows the affected employees to agree or disagree with an application for consolidation; there is no opportunity for them to express their opinions. Therefore, we believe that each bargaining unit should be required to hold a secret ballot vote, with the outcome to be determined on the basis of a majority of votes cast. That would allow the individual wishes of employees to be ascertained.

We believe that employees who are being organized by a trade union are entitled to know what bargaining unit they are being asked to join, and if you combine one or more bargaining units as part of the certification process, you are subjecting those individuals to a future bargaining structure without their consent if you don't have a vote. So we believe that before you combine units, before you throw employees into that type of situation, you must first allow them the opportunity to cast a secret ballot vote.

**Ms Murdock:** We will not be supporting this on the basis of the reasons I gave for not supporting the Liberal motion. I won't waste any time by repeating myself.

**The Chair:** Mr Offer.

**Mr Offer:** I think I'm allowed to speak to this amendment.

**The Chair:** Of course you are, as the rules say.

**Ms Murdock:** Absolutely. Take your time.

**Mr Offer:** We're going to be dealing with this issue, as we have earlier, but we're going to be dealing with it again. We're not even at the certification section, and I have a feeling that the secret ballot vote is again going to be an issue.

I just cannot see why the government would not allow workers to cast a vote, yes or no, in an application for consolidation. It seems to me strange, at a time when people across the country are able to cast a vote, Yes or No, in another matter, that the government doesn't want to give workers who will be affected the same right, the same opportunity.

I've struggled with this secret ballot majority vote since day one. I've tried to find out what the reluctance is to allow workers to make the decision. Even in the Labour Relations Act now, in a certification, if 45% have indicated a positive intent to be represented by a union—under 55%—I believe a representation vote can take place. I think we can view a representation vote, in a very narrow circumstance, as a secret ballot vote. If that is correct, and it is now found in the legislation—again, narrowly speaking—why then wouldn't the government seek to expand upon that?

I think they feel that the representation votes and the certification have worked in the past, and maybe that's why there haven't been any major changes to that area except to lower the trigger point from 45% to 40%. But there has been no effort on the part of the government to say that representation votes were difficult, that they should not be able to take place. If that's the case, why wouldn't we want to expand that at every available opportunity?

As I understand the motion—it is very similar to one which I moved earlier—it's not asking for a great deal. All it's saying is that the board shall combine the units only if a representation vote is taken and more than 50% of the ballots in each of the separate bargaining units are cast in favour of the trade union. To me it says, first, that there is to be a vote, and, second, that the vote is a precondition to the board considering other factors.

Time and again we have heard that this is a positive move; we have heard no arguments against it. Earlier on, I asked why not, and the parliamentary assistant provided some kind of response, but we've never heard from anyone of any difficulties that would be anticipated if such a right were given. We've not heard from the government or from anyone else that, "You can't do this because if you did this, this is what would happen." We've never heard any arguments in that area, so the question is, why the reluctance to give workers the right to choose? I certainly don't know.

I hope the government has second thoughts. I'll be the first to compliment the government if it allows a secret ballot vote on consolidation. I'll be the first to stand up and say: "That's a correct decision. That is a decision that respects workers' rights to choose, workers' rights to be informed and workers' rights to make their choice in a free, democratic way." If the government members reconsider, I will be the first to compliment and congratulate them in this



area. The question is, will they reconsider? Will the parliamentary assistant reconsider?

**Ms Murdock:** I think we've made it fairly clear from the beginning that it is the one area where we just cannot agree with the position you've just put forward, mostly because the experience even on the representation votes, in terms of length of time to get a ballot counted, first of all, is lengthy, and often there is so much wrangling before the actual count is even done that it really is not democratic, as much as you would like. In an ideal world, Mr Offer, I believe firmly that it would probably work, but we unfortunately do not live in an ideal world.

1650

**Mr Offer:** So the government will not reconsider because it takes too long to count a ballot.

**Ms Murdock:** If it were counted like an election, on the day of, and counted and held to be true, but that is not the way it happens at the Ontario Labour Relations Board nor in any other jurisdiction where ballots are taken on secret ballot votes. The experience in other jurisdictions, as well as in our own, unfortunately, is that any kind of delay causes influence by either party; I don't care, it doesn't matter which. That cannot be tolerated until we reach an ideal situation whereby labour relations in this province are not met with so much animosity and adversity. Then we can look at that, but until that day we will not be supporting it, as you and I have discussed at other times, when I have told you that.

**Mr Offer:** I just find it incredible that it is impossible to count the votes on the same day and to create a structure to permit that, when on the 26th of October we're going to be doing that for the whole country. But the government can't find a way to count all the votes in one workplace for all of the employees on the same day.

**Ms Murdock:** That's right.

**The Chair:** Go ahead, Mr Offer. You're speechless. I can tell.

**Mr Offer:** I can't believe it. Can't the government members—

**Ms Murdock:** You had five years at it and I didn't see you trying it. I think you believed and you knew that it was not going to happen, that you couldn't do it, either.

**Mr Offer:** Can't the government members recognize that on the 26th of October there will be millions and millions of people casting a vote, Yes or No, on another question? All the votes will be counted. You will be able to turn on your TV and there will be somebody with a tote board who will be telling you the results as they come in.

To the government members, what is being said here by ministry officials is that votes in a company can't be counted and tabulated on the same day. It's easy in the country, but it's impossible, you are saying, for a company. Is there maybe another reason that we don't know? Please don't use that as the reason. There isn't anyone who is going to see that. We all live through elections. We've won elections; we've lost elections. It's interesting; all of the votes are tabulated and counted and made public within a couple of hours. You're telling me that the reason you are

not allowing workers in this province to vote yes or no on a consolidation is because they can't be counted on the same day? Geez.

**Ms Murdock:** Well, I know you sound incredulous. However, you yourself know that the taxicab drivers—in fact, it was presented here and one of the presenters made the point that the taxicab drivers in Toronto alone have been sitting with their ballots in a ballot box for over a year.

Another one: Ontario Hydro, with 6,000 members; the employer argued that 3,000 of them were supervisors. So for two years they kept debating as to who was a supervisor, and whether or not the card that was signed was a supervisor, before they could even determine who would have the right to vote.

The problem we have here in this province is the adversarial nature of the relations that have existed since labour and management came together. Unfortunately, we have a situation which has been pretty evident, I think, with the displays that have been going on for the past 20 months, in terms of they don't trust one another. As I said, Mr Offer, if we lived in an ideal world, I would be one of the first to go forward with a secret ballot vote, where there was a trusting relationship. Until that day arrives, we are in this unenviable position where, no, we will not be agreeing with a secret ballot vote. And that's it; I'm not going to speak to it again.

**Mr Offer:** So the way you deal with those difficulties is not to deal with the difficulties, but rather to take away the right to vote, so hence there will be no further difficulties in the votes cast because we're going to take away the right to vote.

Don't you think that people would rather have you deal with the issues that cause the problem, instead of saying forget about the issues that cause the problem; what we'll deal with is taking away the right to vote so that we'll never even know the problem?

**Ms Murdock:** Psychologically, cognitive dissonance says that if you sign your name on a piece of paper you then have committed yourself to an action. You're sitting there saying that the people who sign those cards that determine whether or not they want to join a union don't know what they're doing, that their signature means nothing. I know we have moved on to an entirely different portion of this, but the reality is that's not the case. If they signed their name on a card, they are saying clearly and simply that they want to join a union and that there shouldn't have to be another entire structure set up.

**Mr Offer:** We've not even dealing with that section.

**Ms Murdock:** When we get there, if we may.

**The Chair:** Go ahead, Mr Ward.

**Mr Brad Ward (Brantford):** Mr Offer, I'd like to thank you for your thoughts on this issue. When you talk about the existing labour relations system that we have in Ontario, I agree that it is adversarial in nature and that what we're trying to do as a government is change that system into a more cooperative effort where real partnerships are developed. That's what updating the labour act is all about.

When you talk about the need for a secret ballot and the ability for individuals to vote during the certification process, the first concern I have is that currently there is a level of intimidation and coercion that occurs from employers who are opposed to the concept of having their employees collectively make the decision to have a trade union represent them. I haven't yet heard one argument on how we can eliminate that intimidation or coercion. There are different ways to intimidate and coerce employees; there are several ways, and I think we can agree on that.

When you look at the concept of trade unions and the ability of employees to have a trade union to represent them, what we're talking about is the freedom to associate collectively by a group of employees. It's as simple as that. It's not a vote where you're electing someone; it's a decision where, if the majority of employees in a workplace say they want to have a trade union represent them, they do so by signing a union card.

Now, in a certification process, if fewer than 55% of the employees in a workplace make the conscious decision to say, "We want a trade union to represent us," but it's more than 45%—and that will be changed with Bill 40—a secret ballot vote takes place. But if it's over 55%, we're saying that, as in the past, the ability of employees to have that freedom of association is duly recognized by having over 55% sign a union card saying, "We want to be associated."

1700

The problem I have with the secret ballot at this time is the coercion and intimidation that occurs. We've heard it in the presentations over the month of August throughout the province by various segments of the population. How can you eliminate the intimidation and coercion that goes on in the workplace when employees are so afraid of actions of their employer that they're afraid to talk about the concept of unionism during their lunch hour in the cafeteria of their workplace? We've heard that.

When you talk about the secret ballot as the be-all and end-all of the ability of individuals to choose, we on the government side think—and it's your right to disagree and I'm sure you will and I'm sure you'll continue to disagree with us right up until the bill is law, and then, come election in 1995, you can disagree as well on the election campaign. But we think that freedom of association should be guaranteed if, collectively, 55% of the employees in a workplace make the conscious decision to say, "We want to have a trade union representative."

**Ms Witmer:** We're not addressing the amendment in question. We're on a totally different issue.

**The Chair:** I think you're right, Ms Witmer. Please speak to the amendment.

**Mr Ward:** I'm trying to clarify my feelings on that particular issue, and I think I have.

**Mr Hayes:** You did a good job, too.

**Mr Offer:** My comments were all directed to the consolidation of existing units and giving workers the right to freely choose yes or no. Mr Ward's comments were directed to workers' rights on a certification drive. We will be discussing that and how we can allow workers to make a choice in that area, free from intimidation and coercion

from whatever source. But the amendment that is before the committee deals with giving the right to workers in existing units the freedom to choose.

**The Chair:** There being no further debate, all those in favour of this motion, please indicate.

**Mr Offer:** Recorded vote.

**The Chair:** Please keep your hand raised until your name is called. There will be a recorded vote. All those in favour? All those opposed?

**Ayes—2**

Offer, Witmer.

**Nays—6**

Duignan, Hayes, Lessard, Murdock (Sudbury), Ward (Brantford), Wood.

**The Chair:** Motion is defeated.

I want to remind people that there were eight days, according to the motion passed in the House, set aside for discussion of the bill and its amendments and that at 3 o'clock on the final day, all moving of motions and debate will end and matters will be deemed to have been moved and voted upon.

Today is the fifth day of that eight-day period. It's been pointed out to me by committee members that the eighth day really has a modest time frame for discussion of the bill or of amendments, motions bringing amendments, be they by the government or anybody else. There are clearly some of these motions which may, especially in the mover's mind, have more significance than others. Some may be more to the heart or the viscera of the act.

People might consider discussing among themselves a process whereby some, or however many, of the motions moving amendments might be brought forward out of sequence so that matters that are of particular importance to particular people can be addressed and a record can be made or debate can be engaged in. Obviously unanimous consent would permit that to happen and would be entirely in order.

Ms Witmer moves that subsection 7(4) of the act, as set out in section 8 of the bill, be struck out and the following substituted:

"Employees at different locations

"(4) The board shall not combine bargaining units involving employees at two or more separate places of operations if the board considers that a combined bargaining unit is inappropriate because,

"(a) it will interfere unduly with the employer's ability to continue significantly different methods of operation or production at each of the places; or

"(b) it will interfere with the employer's ability to continue to operate the separate places of operation as viable independent businesses."

**Ms Murdock:** I just wondered if there was a particular reason why the government motion wasn't read first, because my understanding was that it would be—on the same motion?

**The Chair:** Because the Chair has relied—

**Ms Murdock:** Has determined otherwise?



**The Chair:** No. The Chair has determined otherwise relying consistently on the wise and capable advice—

**Ms Murdock:** Of the clerk.

**The Chair:** —of the clerk.

**Ms Murdock:** Whose wisdom and capabilities I do not doubt—

**The Chair:** I appreciate your comments and your concern but I think the logic of this will become more and more apparent. It's a hope, so I'm an optimist.

**Ms Murdock:** Okay, that's fine.

**Mrs Witmer:** I thought we were going to deal with the government motion first. However, if we're not going to do it, the amendment we've brought forward here considers two factors relating to an employer's ability to operate before it combines bargaining units involving employees at two or more geographically separate places of operation.

This amendment is identical to the government's amendment, with one exception. The government's amendment, which we're going to be discussing, would apply only to manufacturing enterprises. This amendment that we are introducing would apply to all types of businesses. The distinction is particularly important because consolidation of bargaining units will have an impact on the sectors of our economy where until now unions have had difficulty penetrating. These include such areas as the retail, financial, insurance and other areas of the service sector where you have very small establishments predominating.

I would have to tell you that, although the government is going to be speaking exclusively to the manufacturing sector, if they're going to provide protection only for the manufacturing sector, it's not going to give much comfort to the other sectors of the economy that are going to be the most affected by section 8, which is the combination of the bargaining units.

It's becoming very clear to me that the board's power of consolidation contained in Bill 40 is drafted to give the advantage to unions. Now, if we take a look at this section and the amendment which I'm proposing, it becomes abundantly clear that not only is Bill 40 intended to give more power to unions, it's also intended to increase the number of unionized workplaces in the province. It's intended to have a great impact in areas where unions are presently underrepresented, such as the retail, financial and service sectors.

I feel very strongly that we need to take into consideration the amendment which I have just proposed. We need to give protection to all sectors of our economy. I would suggest the expansion that I have proposed.

1710

**Mr Offer:** I think this is a type of amendment which, again, tries to reinsert a certain balance. Again, it's an amendment that would not have been needed if the preamble to the legislation allowed for balance. This is an amendment which is necessary because the government has charted the board on another course.

It is my understanding that the next motion is the government's amendment. I really want to deal with that

amendment before anything. I know we have to deal with the one on the floor but I think, without question, this amendment is broader in its application than the government's amendment. There are some very curious differences in the government's amendment with the existing legislation that I will want to deal with and get some responses to.

**The Chair:** There being no further debate, all those in favour of Ms Witmer's motion, please indicate. Those opposed? The motion is defeated.

Ms Murdock moves that subsection 7(4) of the act, as set out in section 8 of the bill, be struck out and the following substituted:

"Manufacturing operations

"(4) In the case of manufacturing operations, the board shall not combine bargaining units of employees at two or more geographically separate places of operations if the board considers that a combined bargaining unit is inappropriate because the employer has established that combining the units will interfere unduly with,

"(a) the employer's ability to continue significantly different methods of operation or production at each of those places; or

"(b) the employer's ability to continue to operate those places as viable and independent businesses."

**Ms Murdock:** Under Bill 40, in considering an application for consolidation, the board must apply a two-stage test. The first stage, which is found in subsection 7(3), requires the board to consider the three listed factors when judging whether consolidation is appropriate.

The second stage, in subsection 7(4), which we're looking at now, prohibits the board from consolidating bargaining units in certain circumstances. This second stage was designed to respond to the concerns raised by the manufacturers, as Ms Witmer has indicated, who argue that consolidation could affect the organizational and/or economic viability of two distinctly different plants.

After introduction of the bill, manufacturers continued to express concerns in spite of the language that was in 7(4), and therefore we responded, in this amendment, directly to the suggestions of the major manufacturers.

It would change the second-stage test in two ways. It adds the concept of viability, which was mentioned a number of times, of independent businesses to the factors which would lead the board to decline an application for consolidation, which is 7(4)(b), and it also clearly provides that a second-stage test applies in the case of manufacturing operations as noted by Mrs Witmer.

Note that the result of the second stage, the prohibition in 7(4), would no longer apply to non-manufacturing cases. One of the points Mrs Witmer made in regard to her motion is that while it is true other sectors would not be covered under this, they often had great difficulty in organizing. So consolidation of bargaining units would really be the problem here. This amendment came directly as a result of the manufacturers' request.

**Mr Offer:** I'd like to start off by asking a few questions. On the first line of the amendment, the phrase "manufacturing operations" appears. I'm wondering if you

might be able to help us as to what would qualify and fall within the definition of a "manufacturing operation."

**Ms Murdock:** What kinds of things they would make.

**Mr Offer:** No. I don't want specifics. I'd like to get some idea from the ministry as to what is the definition of a "manufacturing operation," some of the criteria that make up a manufacturing operation, so that those looking at the section might, with some degree of particularity, find out whether they're in or out.

**Mr Jerry Kovacs:** In the drafting of the motion to amend, the ministry considered the notion of manufacturing and considered a variety of definitions of the term "manufacturing" and of the concept of "manufacturing sector."

As I'm sure any part of the ministry which is involved in gathering information in the various sectors of the Ontario economy can tell you, it's difficult and it's a difficult test to actually clearly define what the manufacturing sector of this province might be. It's for that reason that a constrictive definition of the term "manufacturing" doesn't appear in the act. The labour board, of course, will be charged with determining what operations fall within or without the manufacturing sector.

You'll note that the Bill 40 version of subsection (4) refers to the ability of employers to continue significantly different methods of operation or production at each of the places. That language, in and of itself, in some ways describes manufacturing operations. But it was clear from interested parties, during consultations and public hearings and this committee's work, that this phrase didn't clearly enough describe the manufacturing sector. The phrase "manufacturing," therefore, was directly added to the section to meet those concerns.

**Mr Offer:** My concern is that when one uses the phrase "manufacturing operation," I view that as being restrictive. There are numbers of people who might look at that and think they're in and find they're not. In the section which you've taken out, it speaks about methods of operation or production. I think a lot of people will have a clearer sense, in their own operation, what "operation" or "production" means because it's specific to themselves.

**Mr Kovacs:** Nothing was taken out of the subsection. There were additions made. In fact, the phrase I read to you, "operation or production," remains as part of the subsection but becomes part of clause (a). So the language is maintained. As I say, it was in direct response to concerns that this phraseology didn't clearly enough capture the manufacturing sector that the word "manufacturing" was added.

**Mrs Witmer:** It's the same, but there's an addition.

**Mr Offer:** I understand that part, but you've overlaid "operation or production" with "manufacturing operation," so my concern is still there. There wasn't that overlay before. It dealt with operation, it dealt with production; it didn't have the precondition of falling in something called a "manufacturing" thing.

**Mr Tony Dean:** The concerns that were raised with respect to this section by manufacturers mostly came from large manufacturers, and our discussions with them

indicate that none of the people who raised concerns with these sections have any doubt in their minds that they would be covered quite safely under a definition that uses the phrase "manufacturing operation."

**Ms Murdock:** In any case, if there is a doubt by the employer, then all that employer has to do is apply to the board to see whether or not it is, as per the board's definition. It is the large manufacturing concerns rather than the smaller ones, which may not have multiple operational sites which could be defined as doing different work. Their concern, under this section, is not nearly the concern as it is for the large operations, and that's what both Mr Dean and Mr Kovacs tried to explain.

1720

**Mrs Witmer:** My concern with this section is that I'd like to see a definition of "manufacturing operation," but what in essence the government has done by introducing this amendment is narrow down the application of this subsection to only manufacturers. The original subsection 7(4) applied to all employers, not just the manufacturing sector. As a result, it's still going to make it extremely difficult for others in this province.

People in the retail sector are very concerned about this particular section. I know they spoke to the minister's staff as recently as Friday of last week, yet you're not being responsive to their concerns; in fact, you've made it more difficult for them by narrowing down the application of this subsection.

I'm really concerned because again, as far as I'm concerned, it shifts the balance towards unions and doesn't consider what's in the best interests of people in this province.

**Mr Offer:** I have a few other points before we get into a discussion of the section itself. One is important to get on the record; it speaks about geographically separate places of operations. I take it, and I think we have to get a confirmation, that "geographically separate" can be as far as the province is.

**Ms Murdock:** The labour act has jurisdiction only in Ontario.

**Mr Offer:** I want to be clear that "geographically separate" is not viewed as something that happens within a municipality or a regional municipality but in fact applies throughout the province. You can have two manufacturing operations, one in Kapuskasing and the other in Windsor, and a third, for instance, in Cornwall and they could potentially all fall within this section.

**Ms Murdock:** Yes, that's correct.

**Mr Offer:** The next question I have is just a point of clarification. There has been a slight shift in this; that is, an onus has been placed on the employer where one did not exist before. It says if the board "considers that a combined bargaining unit is inappropriate" and then it goes on to say "because the employer has established." In the current legislation, it is a board consideration, so not only is there still the board consideration, but you've folded on top an onus on an employer to make the argument that something shouldn't happen. I'd like to get a statement



from the parliamentary assistant about why this onus on an employer to make an argument against something happening has been created by amendment, consultation of which we have not heard one word.

**Ms Murdock:** "Consultation of which"—could you say that latter part over again?

**Mr Offer:** This is a very substantial change. You have now inserted, after consultation, when we are not going to hear any reflection on this, an onus on employers to argue in the negative. Holy smokes.

**Ms Murdock:** If an employer has, using your example, three different operations in the province where the work is seen to be similar—mind you, I can't imagine nickel mining in Windsor or Cornwall, but using something I'm familiar with, if that was the operation—to a member at the board or even to members within the union it could conceivably be the same operation. You're smelting nickel, whatever, yet the employer may have cause to believe the operations are different. The onus then falls on the employer to show that to the board for wanting the distinction to be made.

Then again, you could be dealing with a company that has three different operations but they produce three completely different products. Again, the employer would have to show that there is a reason not to consolidate.

**Mrs Witmer:** It's obvious that this amendment has been introduced in an attempt to satisfy the union and not the manufacturing sector, because it makes it much more difficult now for the employer. He or she must produce the proof.

The other thing that's been added here is the employer's ability to continue to operate those places as viable and independent businesses, and I'm very concerned as to what the government means. What's the definition of "viable"?

**Ms Murdock:** Okay, again we're into this. The applicant is going to be the employer; it's not going to be the union. The applicant is going to be the employer, and therefore the applicant is going to be giving the grounds for which he or she wants the distinction to be made.

**Mrs Witmer:** But what grounds are you going to accept as being viable? What is the definition of "viable"?

**Ms Murdock:** Certainly I would think the company's definition of "viable" would be that it would be profitable, determined on the basis of what its shareholders are accepting as viable.

**The Chair:** You're suggesting, though, that there are going to be as many definitions of "viable" as there are applicants before the board trying to advance their own causes, subject to what the board might determine indeed constitutes a reasonable definition of viable.

**Ms Murdock:** Which basically the board does now, yes.

**The Chair:** Is that what you're saying?

**Ms Murdock:** Most of the decisions of the board, as you know, Mr Chair, are made on the basis of the individual cases that come before it.

**The Chair:** And the arguments that are presented.

**Ms Murdock:** And the arguments that are presented.

**The Chair:** And whatever prior decisions were made by the board, although it's not bound by—

**Ms Murdock:** That's true.

**Mrs Witmer:** I'm still very concerned about the change in emphasis that proof has to be shown by the employer. Also, I'm very concerned about the narrowing down of this application to the manufacturing sector. It offers absolutely no protection to the retail, service, or financial sectors from combining bargaining units involving employees at two or more geographically separate locations. As I said before, it becomes very obvious that the intent of this combination of bargaining units really is to facilitate and increase unionization in the province. I'm very concerned that there's no protection for those other people whatsoever now with this amendment.

**Mr Offer:** I think the Chair earlier on said that the question of "viable" is really not limited, in fact; it's dependent upon the issues that are before the board, and that I think is correct. But my concern with the section is the process it's creating, the framework. I'm not talking about the decisions that will take place from the board; I'm talking about the process that has been created by this section.

1730

It is clear that under the old section—about which, by the way, I had some concerns; let me put that on the record—yes, the employer would make the application, but I read section 4 to mean that when the employer in fact contested the consolidation, the board would then ask the employer and the applicant certain questions and then make its decision based on the responses it received.

When you have the onus on the employer, the board need only ask the questions of the employer, and that is a tilt. It is a shift. It is an imbalance. The board must, at the very least, ask questions of both groups in order to satisfy itself in the area of the criteria under the legislation. But when legislation says, "because the employer has established that combining the units will interfere unduly," and it goes on, it means the employer must establish. If the employer must establish, it is putting on the employer the onus to establish, and there is no countervailing responsibility on the other side.

We've already discussed that the employees have no say in this matter. The other side is the applicant who has made the application for consolidation. Under this section, the employer is left with, in some instances, the responsibility of proving to the board that a consolidation will affect its ability to continue to operate its places as viable and independent businesses. That's by legislation.

**Ms Murdock:** This section only.

**Mr Offer:** That's correct.

**Ms Murdock:** Because it is a prohibition as far as the employer is concerned. The employer is the applicant under subsection 7(4); it's not the applicant for the consolidation.

**Mr Offer:** However you wish to decide who the applicant is, here's what the situation is going to be: You're going to have two bargaining units, same employer, separate location, application for consolidation, contested by

the employer, board makes decision, but now the board need only hear the argument from the employer.

Ministry officials are shaking their heads, but I almost see this as a presumption that you've created.

**Ms Murdock:** But you see, you're forgetting the deeming aspect of subsection 7(3), because the board shall consider the consolidation.

**Mr Offer:** Wait, wait. Are you talking about factors to consider?

**Ms Murdock:** Yes.

**Mr Offer:** Okay. It says that the board may take into account such factors as it considers appropriate and shall consider the extent to which combining the bargaining units would facilitate viable and stable collective bargaining, reduce fragmentation, cause serious labour relations.

We may have discussions over those criteria, but there is no onus placed on one or the other, on one above the other to make that case. What we are doing with subsection (4) is creating a presumption of consolidation unless and until the employer rebuts that presumption. That's not fair.

**Mr Dean:** Could I respond to this?

**Mr Offer:** Sure. Help me out on this.

**Mr Dean:** Let me say that if there was no amendment to subsection (4), Mr Offer—that is, subsection (4) remained as in the printed version of Bill 40—the board would be unlikely to act on subsection (4) in the absence of submissions from either party. Given that this subsection (4), as currently written, was intended to be an exception to consolidation for the sake of employers, responding to employers' submissions, it's likely that even as unamended, subsection (4) would be driven, would be invoked, by submissions and an application by the employer.

Moving from that to the amended subsection, I'd have to say that again, a further attempt has been made to give employers in the manufacturing sector pretty much exactly the kinds of exception wording that they're asking for. Since that exception will still be driven by employer applications, the amendment would place an onus on the applicant employer to prove that the exception should be accepted by the board, so there is not a departure from existing subsection (4) into the amended subsection (4). It would still be applicant-driven, and it's our assumption that the applicant would in all cases still be the employer.

**Mr Kovacs:** If I might add, Mr Offer, to Mr Dean's comments, I am concerned about your suggestions that there may be a case in which the labour board would turn only to the employer for submissions in an application for consolidation. I just want to reiterate what I think Mr Dean tried to state to you, that in an application for consolidation where the trade union is the applicant, the board will be required to consider at least the factors set out in subsection (3), and the applicant will be required to make submissions in respect of those.

It will likely be the employer, in response, who will attempt to rely on subsection (4) provisions, and under the version presented in the motion to amend, it will be the employer who will be required to establish the factors set out in clauses (a) and (b). Those are employer factors: "the

employer's ability to continue significantly different methods of operation or production" and, secondly, "the employer's ability to continue to operate those places as viable and independent businesses." Not surprisingly, those are factors that will be in the hands of the employer to establish. It's not intended to be a reversal of onus in this subsection.

**Mr Offer:** I know we don't have a great deal of time with this bill. I just have a concern. I appreciate the response, but I can't help but feel that where a bill says "because the employer has established," it puts something on the employer to establish. Where the bill does not have that now—but the amendment does have this—employers will read this and say, "Now we have to establish something." Before it was the board, and it could be—

**Ms Murdock:** No, it wouldn't, and the thing is, the employer would not be applying under subsection (4) unless he had established something in order to make it different in order to apply for that prohibition in that subsection. If you didn't have those sections in place or those different geographic locations, you wouldn't be applying under subsection (4).

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**Mr Offer:** That's absolutely correct.

**Ms Murdock:** Right.

**Mr Offer:** Under section 7, subsection 7(1) says that the board may combine two or more bargaining units if there is the same representation by the same trade union.

**Ms Murdock:** Right.

**Mr Offer:** Subsection 7(2) says that on an application, together with an application for certification, the board may—it doesn't have to, but it may—do the following.

**Ms Murdock:** Absolutely.

**Mr Offer:** It may combine, and it's different forms of combination.

**Ms Murdock:** Right.

**Mr Offer:** Again the board, under subsection (3), has the ability to take into account certain factors in determining whether an application for consolidation is to take place.

**Ms Murdock:** Right.

**Mr Offer:** So it has all of that. There is no argument. There has been no decision to consolidate.

Then we get to subsection (4), which says the employer must establish.

**Ms Murdock:** No. You only get to (4) if the employer applies under that subsection. Otherwise, if the employer does not have those operations in place, he or she will never apply under that subsection.

**Mr Offer:** Subsection (4), though, applies when there is an operation that is geographically distinct.

**Ms Murdock:** Yes.

**Mr Offer:** So you have that situation. That's what (4) is all about. Subsection (4) kicks in when there is an employer who has two branch plants, for instance.



**Ms Murdock:** Correction there. That's not geographically distinct, though. They are geographically separate places which have different methods of operation.

**Mr Offer:** We'll leave it at geographically separate, and that's right. So they're in two different places. That's when (4) kicks in.

**Ms Murdock:** If the employer applies for the prohibition.

**Mr Offer:** I just want to be clear on this, because the way I read this section, there's an application for consolidation. There is the same bargaining unit, so we pass that precondition. The employer has geographically separate places of operation, and the board still has not made a decision to consolidate yet. Correct? So the question I have goes back to the first submission—that is, you are foisting the onus on the employer.

**Ms Murdock:** Subsection (4) would never come into play unless the employer applied through subsection (4) for the prohibition. You could sit there with an employer who had two geographically distinct operations at which each local union would ask for consolidation. If the employer had no objection, they'd only go to subsection (3). It is only when the employer says, "I don't think those two locals should join together, because they are operating distinct, different operations," and therefore subsection (4) then kicks in.

**Mr Offer:** I have one last question on this. You are saying this amendment is in response to concerns raised by whom? By the manufacturing organizations?

**Ms Murdock:** Yes.

**Mr Offer:** So you're saying the manufacturing operations, the people who make—

**Ms Murdock:** This request.

**Mr Offer:** They have requested the wording of this section?

**Ms Murdock:** Yes.

**Mr Offer:** I just wanted to ask that question. I'm not taking issue with that. All I can do, from my point of view, is express surprise that any manufacturing operation would feel comforted with this section. I will be taking it to many of those groups, of which there are umbrella organizations, to find out whether they take comfort with this onus.

**Ms Murdock:** Okay. It is at their request, Mr Offer, because they did not take any comfort with significantly different methods of operation or production.

**Mr Offer:** That I know.

**Mr Ward:** Ask them which they prefer, the old one or the new one.

**Mr Offer:** That's not what I asked.

**Mr Ward:** See what they say.

**Mr Offer:** Oh, I know they're not happy with the existing.

**Ms Murdock:** They're not happy with the entire Bill 40.

**Mr Offer:** I was talking about this one particular section.

**Ms Murdock:** Oh, I know.

**Mr Ward:** But if they had a choice, which would they pick?

**Ms Murdock:** It's pretty evident.

**Mr Offer:** Oh, sure.

**The Chair:** Mr Murdoch, you are entitled to speak to this matter, notwithstanding that you're not a member of the committee.

**Ms Murdock:** Mr Murdoch with an "h."

**Mr Bill Murdoch (Grey):** Did we get to number (3)? I just wonder if we got to number (3). We were at (2) and then we went to (4). Did we get to (3)?

**Mr Wood:** This is Bill 40, eh?

**Mr Murdoch:** I know that; I realize that.

**The Chair:** Mr Murdoch is well aware of the legislation before this committee. He's a hardworking and attentive member of this assembly.

**Mr Murdoch:** And I thought we were on television, because I saw you all sitting here and now I can't find the camera, so I don't know what's going on.

**The Chair:** I can only speculate, Mr Murdoch.

**Mrs Witmer:** Call the question.

**The Chair:** All those in favour of Ms Murdock's motion, please indicate. Opposed? Motion carries.

Now Ms Witmer moves that subsection 7(5) of the act, as set out in section 8 of the bill, be struck out and the following substituted:

"Amendments

"(5) In combining bargaining units, the board may amend any certificate or may amend any provision of a collective agreement if the existing collective agreement would be inoperable or uninterpretable without the amendment."

Go ahead, Ms Witmer.

**Mrs Witmer:** As you can see, we're very opposed to the combining of bargaining units, and this one would restrict the board to making only those changes necessary to allow for continued operation of the newly combined bargaining units, without taking away from the parties their fundamental right and their responsibility to bargain.

We feel that this amendment would preserve the collective bargaining process, which we feel is very important. Under Bill 40 as proposed, consolidation will allow a newly organized group of employees to bypass totally collective bargaining and obtain immediately the benefits obtained by other employees through years of collective bargaining.

We're also concerned that this provision could require the board to merge seniority lists, order layoffs, create wage rates and job classifications. We have introduced this specific amendment then, which supports our contention that the best interests of all parties are met by effective collective bargaining, and I would hope that the government would support this amendment.

**Ms Murdock:** I'll speak, Mr Chair.

**The Chair:** You don't have to if you don't want to.

**Ms Murdock:** I realize I don't have to, but I would not want Mrs Witmer to think that we don't have a

position on this, or to at least explain why we are not supporting this motion.

Basically we consider this amendment to be unnecessary because the proposed subsection 7(5) of Bill 40 permits the board to amend existing collective agreements or to make orders as it considers appropriate in the circumstances.

Now, you use the word "inoperability," and that can be expected to be considered by the board, but again, having said that, we think the board should have sufficient flexibility to apply its expertise that it has developed. The other thing is that having changed the purpose clause so that it has removed the fears of the terminology of "improved terms and conditions of employment," this, in conjunction with our subsection 7(5), should alleviate this and make your amendment unnecessary.

**Mrs Witmer:** That doesn't give me much comfort, but obviously the government's not going to support this amendment, which we did believe was in the best interests of all concerned and would certainly enhance the process of collective bargaining.

**The Chair:** Do you want an opportunity to try to persuade some of the committee members?

**Mrs Witmer:** Unfortunately we have about 70 more amendments which I'd like to deal with.

**The Chair:** There being no further discussion, all those in favour of Ms Witmer's motion? Opposed? The motion is defeated.

Once again, I don't know what committee members have to say about this, but with the prospect of there being only a very short period of time and, as Ms Witmer indicates, a whole lot of motions from all three caucuses, perhaps there can be some unanimous agreement as to motions being dealt with out of order.

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**Mr Offer:** Just on that point, I'm sure the Chair would want to be informed, if there is some agreement, just prior to tomorrow's meeting.

**Ms Murdock:** Give us some time. We're not going to lose our time today to discuss that.

**The Chair:** I want to indicate that I will be dealing with an important matter tomorrow. I won't be here, so the Vice-Chair will be here chairing. But it's clear that this committee agrees that, on unanimous consent, there can be motions taken out of order. That's unanimously agreed on.

**Ms Murdock:** You can do anything you want on unanimous consent.

**The Chair:** I just want to make that clear so the Chair tomorrow doesn't feel he or she is prevented from doing that.

Ms Witmer moves that section 7 of the act, as set out in section 8 of the bill, be amended by adding the following subsections:

"No strike or lockout

"(5.1) No employee affected by a decision of the board under this section shall strike and no employer shall lock out such an employee because of a difference relating to the decision of the board.

"Binding arbitration

"(5.2) A difference relating to a decision of the board under this section shall be settled by arbitration and, for that purpose, section 41 of the act applies with necessary modifications."

**Mrs Witmer:** The intention of this particular amendment is to provide that any bargaining issue pertaining to the board's decision to combine could not be the cause of a strike or lockout and, failing agreement of the parties to resolve any and all matters related to the board's decision, would be submitted to a third-party arbitrator for final and binding settlement, as is the case, as we know, in first-contract agreements.

The source of concern and the input we have received on this amendment has again come from the Canadian Paperworkers Union. On August 13, 1992, the Canadian Paperworkers Union requested this amendment to ensure that a board's decision relating to combining bargaining units could not result in a strike or a lockout. They made the point that each bargaining unit has its own collective agreement, has its own defined terms and conditions, such as seniority rights, job posting clauses, layoff clauses etc. Nowhere does this section in its amended form deal with the problems of conflicting contractual language.

It may be okay to say that that's what we have the arbitrators for, but whose language is going to take priority over the other's, since both of them are going to have equal status? They're very concerned that areas of contention could result in employees being locked out or forced on strike by one or the other of the newly combined units. It's in response to the concern of the Canadian Paperworkers Union that we have introduced this particular amendment.

**Mr Ward:** The voice of labour.

**Mrs Witmer:** We listen to everybody.

**Mr Offer:** On this, and especially with respect to the presentation made by the Canadian Paperworkers Union, I think we all recognize we heard very many good presentations. One of my earlier amendments was also based on the submission made by the Paperworkers union. They made an important presentation, as all did. They shared with us their perception of the legislation and how it would affect them, and I hope that the government is responsive to some of the suggestions made by those who came before the committee.

I must say that I have some growing concerns as to whether the government was listening during the public hearing process. I think that's becoming, in my mind, more evident as the days progress. There were important presentations made by a variety of people, groups and associations, the Paperworkers union and others, business community representatives and others. They came before the committee speaking about a piece of legislation which they had a concern with that should be changed. I know that I've brought forward, my party has brought forward amendments reflective of those presentations. The Conservative member has indicated that this is another amendment.

You know, people are watching the proceedings of committees—not this one over the television, but they still read Hansard and things like this. They want to see whether their positions have been addressed, dealt with



and reflected in the legislation. I have a concern as we go on that many of the groups that brought forward some crucial issues are not being reflected in the legislation.

**Ms Murdock:** Just very briefly, if my memory serves me correctly, it wasn't the Paperworkers union per se, it was the former business rep of the Paperworkers union who made a separate presentation, who offered this idea.

**Mr Offer:** That evening.

**The Chair:** He was clearly speaking on behalf of that particular local of the Canadian Paperworkers Union.

**Ms Murdock:** Yes.

**Mr Ward:** A consultant. Wasn't he here as a consultant?

**Ms Murdock:** He was a consultant.

**The Chair:** Yes, that's what I say. This gentleman would argue that he was speaking on behalf of that particular local and he clearly wasn't speaking on behalf of the Canadian Paperworkers Union, national office or provincial office, but very much on behalf of that local.

**Ms Murdock:** That's right, yes, and I think that clarification needs to be made.

But this motion that Ms Witmer has put forward requires that all disputes arising out of a decision of the board on consolidation would be settled by binding arbitration, whereas strikes and walkouts arising from such disputes would not be permitted. The act and the board jurisprudence do not permit bargaining to impasse on disputes about the expansion or contraction of any of their bargaining rights, as I'm sure you know. The board has the authority to define the appropriate bargaining units in any disputes where the board decisions may be referred back to the board for reconsideration. So I think and, with respect, say, that this motion is unnecessary and inappropriate.

**The Chair:** Any further discussion? None.

All those in favour of Ms Witmer's motion, please indicate. Those opposed? Motion is defeated.

Ms Witmer moves that section 8 of the bill be amended by adding the following as a section of the act:

"Notice of organizing drive

"7.1(1) A trade union that wishes to attempt to persuade employees of an employer to join a trade union shall promptly give written notice to the board of its intentions before beginning to do so.

"Information

"(2) Upon receiving the notice, the board shall provide to all employees that may be affected by the activities of the trade union information describing the rights and obligations of the employer, the trade union and the employees under this act.

"Same

"(3) The information to be provided by the board shall include the following:

"1. Details of the number of employees whose consent is required for certification.

"2. A description of the circumstances in which a representation vote is not required.

"3. Details of the amount of the dues that employees will be required to pay to the trade union.

"4. A description of the entitlement of the employees to continue to work during a strike or a lockout.

"5. Details of the process for decertifying the trade union.

"6. A copy of the constitution of the trade union."

Ms Witmer, I trust you want to speak to that, but in view of the fact that it's one minute to 6, are you suggesting that we adjourn?

**Mrs Witmer:** I would suggest that we adjourn.

**The Chair:** Thank you. We are adjourned until 3:30 tomorrow or the end of routine proceedings. Thank you.

The committee adjourned at 1759.

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**Acting Chair / Président suppléant:** Duignan, Noel (Halton North/-Nord ND)

**Vice-Chair / Vice-Président:** Huget, Bob (Sarnia ND)

Conway, Sean G. (Renfrew North/-Nord L)

Dadamo, George (Windsor-Sandwich ND)

Jordan, Leo (Lanark-Renfrew PC)

Klopp, Paul (Huron ND)

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\*Turnbull, David (York Mills PC)

Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgianne ND)

\*Wood, Len (Cochrane North/-Nord ND)

#### **Substitutions / Membres remplaçants:**

\*Duignan, Noel (Halton North/-Nord ND) for Mr Huget

\*Hayes, Pat (Essex-Kent ND) for Mr Klopp

\*Lessard, Wayne (Windsor-Walkerville ND) for Mr Dadamo

\*Ward, Brad (Brantford ND) for Mr Waters

\*Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Jordan

\*In attendance / présents

#### **Also taking part / Autres participants et participantes:**

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Kovacs, Jerry, legal counsel, Ministry of Labour

Murdoch, Bill (Grey PC)

**Clerk pro tem / Greffier par intérim:** Decker, Todd

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Wednesday 14 October 1992

# Journal des débats (Hansard)

Mercredi 14 octobre 1992

## Standing committee on resources development

Labour Relations and  
Employment Statute Law  
Amendment Act, 1992

## Comité permanent du développement des ressources

Loi de 1992 modifiant des lois  
en ce qui a trait aux relations  
de travail et à l'emploi

Chair: Peter Kormos  
Clerk pro tem: Todd Decker

Président : Peter Kormos  
Greffier par intérim : Todd Decker

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 14 October 1992

The committee met at 1531 in committee room 1.

### LABOUR RELATIONS AND EMPLOYMENT STATUTE LAW AMENDMENT ACT, 1992

#### LOI DE 1992 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX RELATIONS DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

**The Vice-Chair (Mr Bob Huget):** It's 3:31. We will resume the debate on Ms Witmer's motion.

**Mrs Elizabeth Witmer (Waterloo North):** Before I begin my discussion of this amendment, I just want to indicate that as each day in this committee progresses, I become more aware of the fact that the consultation process surrounding Bill 40 was an absolute sham.

Because of the time restrictions on this committee and also on the days spent in the House, there is no opportunity to consider all of the presentations that were made this summer to this committee when it sat in Toronto and travelled across the province.

I think to have demanded of people that they put time and effort into making presentations, which we now obviously are not ever going to have a chance to debate, was wrong and very misleading.

We're now at section 8. We'll be here today, we'll be here tomorrow and we have half an hour on Monday. I have over 80 amendments which have reflected the views of people who made presentations and we will never have an opportunity to discuss those amendments in this committee or in the House.

I have to tell you I am totally disillusioned. I believe the government never intended for there to be a dialogue and real consultation on this issue.

**Mr Steven Offer (Mississauga North):** Can I speak to that?

**The Vice-Chair:** We're discussing Ms Witmer's motion on section 8, and I was about to remind Ms Witmer to address the motion.

**Mrs Witmer:** The amendment that I have introduced here adds a new requirement to the act. A union would be required to provide a notice of organizing to the board and the board required to distribute information packages to employees setting out the nature and consequence of their decision.

This would include the number required for certification; the timing and opportunities for decertification; the fact that if more than 55% of the employees sign membership cards, there will be no representation vote; the effects on their ability to work during a strike or lockout; the duties owed by the trade union; the amount of union dues they

will be required to pay, and requiring the provision of the union's constitution.

Although the cabinet submission stated that the certification process must be a more open one, by prohibiting petitions and restricting the right to oppose union certification, this goal is certainly not achieved within Bill 40. If the government remains committed to prohibiting petitions, some degree of openness and informed decision-making can only be achieved if unions are required to provide a notice of organizing and the board distributes information packages to employees setting out the nature and the consequences of their decision.

Unfortunately, we have here in Bill 40 a bill which gives substantial new rights to unions, without requiring any new responsibilities. There is absolutely no onus on a union to provide employees with copies of recent collective agreements negotiated by the applicant union, the union constitution and discipline procedures or information on the amount of union dues payable so that employees can make an informed decision. Some employees are even told that joining a union will not cost them anything.

Certification under Bill 40 is going to be based solely on the number of cards submitted. There's going to be no minimum payment and there's going to be no right to revoke your signature after the application. There's no right whatsoever to change your mind. There's no way of knowing whether people knew what they signed and there's absolutely no way of knowing what they were told or what promises or inducements were made to them.

Therefore, we believe very strongly that in the best interests of both employees and employers, there is a need for an open, fair discussion. There is a need for a decision-making process that totally eliminates the undue influence on an individual's decisions by any outside party, whether it's another employee, the employer or the union. The best mechanism that democracies have designed for this is some sort of open, well-informed campaign which would end with a secret ballot vote.

This amendment that I have proposed, which encourages more openness and informed decision-making, is based on the concern we have always had that Bill 40 further eliminates and infringes on the individual's rights and freedoms. I'd like to take a look at the present impact on individual rights.

The Labour Relations Act, as you know, already grants significant opportunities and rights to trade unions. Once unions gain this exclusive bargaining agent status, there is a fundamental change in the employment relationship which employees need to be aware of, because now all dealings between the employer and the employee must be conducted through the union even if the employee did not personally choose union representation.

Individual autonomy has been totally surrendered to collective action. Once employees are forced or choose to join a trade union, they can be required by the union to pay dues which are deducted from their paycheques. The unions also have the means of expanding their control over the workplace by bargaining for a requirement that all employees in the union be union members and that only union members be hired. The dues that employees pay the union can also be expended on political causes which the individual employee may or may not support.

The union has a responsibility to share with employees who are considering unionization all the information regarding the nature and the consequence of their decision, because the decision is far-reaching. It does change the relationship of employment. Unionization also means that individual employees may find themselves embroiled in a strike or lockout they do not support. They need to be informed of that possibility.

Bill 40 gives unions even more power than they had before, because they now have the right to prevent individuals from working during a strike regardless of the degree of support or lack of support of the union position without giving unions any more responsibility or accountability to their members.

Bill 40 and the new requirements for certification do absolutely nothing to enrich the individual's participation in the democratic process, since there's no requirement to have a vote, there's no requirement at the present time to make sure that individuals are aware of the nature and the consequence of their decision, that they be well informed. It appears there's further encroachment at the present time, with the new legislation, on an individual's freedom.

I believe and our party believes that legislation that enhances trade union power must also take into account the increased potential for abuse and it must be offset by accountability to those individuals it represents. Thus we have added this amendment here which requires that information be distributed regarding the nature and consequence of the decision to join a union in order to ensure some accountability and to make sure that all employees are fully informed of what it means to join a union.

1540

**The Vice-Chair:** Thank you, Ms Witmer. Further discussion?

**Mr Offer:** I know that today we're going to be dealing with this aspect of the bill and I think it's probably correct to say that this is an issue which was touched upon more often than any other aspect of the bill during our public hearings over the summer.

It's not to say that the other areas of the bill were not dealt with, because they were, but I think that this area was in a variety of ways dealt with by more people. It was almost a common theme in the presentations that at some point in a presentation the issue of organizing was going to be addressed. So this is an area where we heard a great deal of discussion and, I must say, not only discussion but positive suggestions for change.

Clearly, we heard that up to now—and I say this in no critical sense but really as a reality—organizing did and

continues to take place in the shadows and not in the open; that intimidation and coercion have on occasion taken place, not as a general rule, but have taken place; that the intimidation and coercion or misinformation is not the monopoly of one or the other, but rather I'm sure there are examples where it is taking place on both sides of the issue; that workers in this province should have the right to join a union of their choice; that there is the right and freedom to associate. But the legislation is deficient, glaringly deficient, in that it does not create a framework for workers to freely have the opportunity to choose whether or not to be part of a union.

The motion brought forward by Ms Witmer is one which, I must say, is very similar to the motion I will be bringing forward in short order. This is an opportunity before this committee and the Legislature. It is an important opportunity. It's an opportunity to set forth a new system for organizing. It is not based or premised on subjectively determining the value or lack thereof of unions. That's out of the equation.

What we are going to be able to do, if the government will allow, is permit workers to freely choose whether they wish to be part of a union or not. If they say yes, so be it; if they say no, so be it. But one of the things which is absolutely necessary as a condition, and not a single step can be taken unless this is the first step, is that workers should be given notice of an organizing drive.

Many people would say, "I'm sure that's in the act right now," but it is not. Others would say, "I'm sure it's in Bill 40," the much ballyhooed changes to the Labour Relations Act, but it is not. So we bring forward amendments which mandate that all employees in a workplace be given notice of an organizing drive taking place.

It goes on to talk about what is contained in the notice, but surely we cannot expect any system for organizing to be at all viable, at all acceptable, if there is not the right in legislation for employees to be informed that a drive is taking place and what their rights are. If we can't accept that, then the government and the government members must recognize and realize that this is another example of rights being taken away from workers. I would challenge anyone, any time, anywhere, to discuss this issue with me.

The first example was part-time/full-time workers. The second example was workers in a consolidation application. The third example is what we have before us. The heart and soul of the Ontario Labour Relations Act will always rest in the rules surrounding certification. That's what it's always going to be.

Will the Ontario Labour Relations Act give to workers notice of their rights? If it does, then we move on to the next step; if it doesn't, then you have to show why it was so important that workers could not be given their rights. You have to show me somewhere in the legislation or in regulations where it is, and it's clear that it is nowhere.

We are dealing with this section. I noted the opening comments of the member referable to this section, and I talk about the opening comments dealing with the scant amount of time we have with respect to this bill. We are now in day six of our eight-day play. This is day six of the play produced by the Minister of Labour and the Premier.



The eighth day is 30 minutes; no time to deal with any sections.

Today we have to deal with what I believe in many people's minds is of central importance in the act, that is, organizing. What regime are we going to create in organizing workers? What protection are we going to place in the Ontario Labour Relations Act when an organizing drive takes place? What is it that is going to be found in the Labour Relations Act that protects workers' rights to choose in a free and democratic way, without intimidation, fear and coercion?

1550

I always believe that the first thing is giving those workers, in this instance, the right to know. It is as basic and understandable a point as there is, not only in this section but in others. It's almost as if there were a referendum around the country giving people the right to vote and just deciding not to tell them the day they should cast their vote. What right is that? What right is there if you give a person a right to vote but don't tell them the day upon which they can cast it? What right is there to a worker in the Labour Relations Act if there's no obligation to tell the workers their rights under the act?

There are others who would prescribe certain intent behind things like that. I'm not going to get into that, but there are many others who would suggest that maybe the absence of that is there for a reason.

I'll speak in support of this amendment. I am well aware that we don't have much time to deal with this bill. There will be other sections that will never be discussed. There will be matters of substance that will be placed on the legislative floor without any member having the right to talk about it. Think about that. The right of members, not just in this committee but in the Legislature, to speak to an issue will be taken away. For those who don't think that's the case, I will just ask them to read the government House leader's motion. Motions will be tabled and then they will be voted upon and you will have no right to discuss this. You have no right to discuss the issue, the impact and what it means.

You guys are going to pass the bill and then you'll be dealing with the next bill. You are going to leave the impact of this bill to the people outside this committee room. The people who will have to live with this bill won't be able to have their thoughts made known prior to it being passed.

Mr Wood thinks that's sort of funny, that we leave the impact of this bill to the public. I disagree, when there are over 500 people a day losing their jobs, when companies are not expanding in this province. We are now being given the impact of this bill on a month-by-month basis. The government refuses to conduct an economic analysis statement. They refuse to look at what the impact of this bill would be for all the sectors and said it wasn't possible to do it. Everybody else said it was, but the Minister of Labour and the Premier said it wasn't.

So each month we are going to be reminded of the impact. Each month a new chapter will be opened, and that chapter will start off with the Minister of Labour's own employment statistics. Every other province in this country

is starting to move forward except for one. Let me tell you something: What's the one that isn't? It's Ontario. Ontario is the only province in this country, and that has started not only since Bill 40 was only introduced but was discussed.

**Mr Len Wood (Cochrane North):** Because of the business lobby.

**Mr Offer:** Now we hear from the NDP member that it's because of the business lobby. All I can say is get out of this committee and get into the real world. The fact of the matter is that they're moving out of here because the competitive nature within the world, which the Minister of Labour alluded to today, is such that they have to move to the jurisdiction which guarantees them the ability to service their customers. It used to be Ontario and now it's changing. We heard today that Dare is moving out. They're in Kitchener, I believe. They were going to be expanding, and where did they expand? In Ontario? No.

**Mrs Witmer:** Two hundred jobs lost.

**Mr Offer:** Two hundred jobs lost. Think about that.

**Mr Paul Klopp (Huron):** Are they buying Canadian wheat, I wonder?

**Mr Offer:** It's very interesting that government members make light of that. That's a company that—

**Mr Pat Hayes (Essex-Kent):** Hey, we don't make light.

**Mr Offer:** —was extremely successful, that has been in existence for probably 100 years and has always expanded within the province.

**Mr Hayes:** On a point of order, Mr Chair: Mr Offer, we have the patience to listen to you ramble and ramble on, and you have the right to do that. But don't start saying that members of this government are making light of a situation where people are laid off work. If your government had fought as hard against free trade and some of the other issues, we wouldn't be in this mess today. That's done a hell of a lot worse than any piece of legislation we could ever bring forward.

**Mr Offer:** That's an interesting point of order, especially from a representative of a government that's already opened up a trade office in Mexico.

However, the realities of this bill are that the perception and the substance have scared away investment. It hasn't been the business community; it's been the bill. Look at the bill. The bill has done that. It hasn't been anybody making up something; it has been people who are reading this legislation and saying that this legislation creates, in this province, a climate which exists nowhere else in North America.

It's not some billboard that appears on some corner in the city of Toronto. It's a whole group of people within and outside this province, who have never seen a billboard in this city, who are reading the bill and are making decisions. Those decisions are costing investment and costing jobs. Every month—mark my words—you are going to see, chapter by chapter, the economic impact statement come in, and you will see it through loss of jobs and through loss of investment.

But I want to get back to the motion, Mr Vice-Chair.

1600

**The Vice-Chair:** I was about to ask you to do that, Mr Offer. Thank you.

**Mr Offer:** I think it's an important point. Some might say, "Well, you might have wavered a tad from the motion," and they're right, I did. I apologize, Mr Vice-Chair, for doing that, but it wouldn't be necessary if we were given sufficient time to deal with the bill. It wouldn't be necessary if we were given sufficient time to deal with the aspects and the substance of each section.

**Mr Wood:** David Turnbull told you yesterday why we wouldn't have time, because of your sermon.

**Mr Offer:** Mr Wood says that the reason is because I speak to the bill; I speak to the sections.

**Mr Wood:** No, I didn't say that. I said that David Turnbull reminded you of that.

**Mr Offer:** Maybe you don't agree, but I happen to agree with this amendment in giving workers notice of organizing drives. Maybe you, as a member of the NDP government, don't agree with that, but I agree with it. I agree that workers in this province should be given notice as to an organizing drive. I believe that workers should be given notice and information as to what their rights are. I believe that workers should be given notice as to what the impact and implications of unionization will be to them and to their families and I believe that workers of this province should be able to vote accordingly. We will be hearing very shortly whether the NDP government members feel the same way.

**Ms Sharon Murdock (Sudbury):** I believe that notice would not be a bad idea either, except that when the Burkett report first suggested that, it suggested not only notice but also access to names and so on be provided, and then following that notices be put up in the workplace. When the minister and I went out and did the consultations, it was very evident from the groups that presented before us that this wasn't acceptable. As a consequence, we rejected the entire section, and as you can see by the amendments, there is not a notice requirement.

I notice in Mrs Witmer's motion that the notice would be sent, rather than to the employer, to the board and then the board would provide to all employees who may be affected by the activities of the trade union the information that we required. While that sounds on the face of it quite logical, the reality is, first of all, that then there would be a determination made—by whom, we don't know—as to who would constitute the bargaining unit; that's number one.

Number two is that as a consequence of our decision not to include it in the amendments in Bill 40, we then took it and expanded the operations of the information services at the board. Any employee now, as has been the case since the Ontario Labour Relations Act has been around—for what?—over 40 years, can call the board. I think it is now incumbent in all workplaces that there should be a telephone number available. Although that isn't legislated, it would make sense that it be present, just so that workers in Ontario should have that right. As I recall, we committed during the hearings that we would make the advertising campaign and the educational activities of the OLRB and

the Ministry of Labour more prevalent and available to all people in the province, not just to people who are employed in workplaces.

We're not supporting this motion because it has been discussed since the Burkett report and ongoing. I know that I'll be speaking again to this when the Liberal motion comes forward, but the notice to commence an organizing campaign, like I said, on the face of it, does not take into consideration all of the ramifications of numbers, of whether or not all members would get it, who would be in the bargaining unit. We are not, as a consequence, supporting that.

**Mrs Witmer:** I thank Ms Murdock for her response. However, I do believe it's a very weak response. If we take a look at the dramatic changes that the government is proposing to the collective bargaining process and the increased responsibility it is giving to unions and boards, I believe if it were truly committed to making the organizing drive as democratic as possible, it would have been quite possible to incorporate this type of system where information would be distributed to employees which would set out the nature and the consequence of their decision.

It's fine to post notices in the workplace about the board, but our motion here speaks specifically to the union that is attempting to organize workers. What is the history? What amount will be the union dues? What is the union constitution? Employees are entitled to know more than just vague generalities. They should have access to all of the information regarding the union that is attempting to organize that unit.

I would also say that there were numerous such presentations made during the committee hearings. All of the members of the More Jobs Coalition, all of the members of Project Economic Growth—and we know that there were many, many people included in those two groups—the Retail Council of Canada and Tourism Ontario all very strongly supported the amendment which we have provided here regarding notice of organizing.

I guess I would just conclude by saying that Mr Offer referred to the fact that organizing campaigns are often carried out in secrecy, and we know that to be true. If one of the aims of Bill 40 is to promote a more cooperative relationship between business and labour, it's difficult to see how that can be accomplished if the relationship begins in secrecy. If you have a notice of organizing, if you have employees fully informed, if you have an open process, then in the end the employer can be much more satisfied that the bargaining agent the employees have selected does truly represent the interests of the employees, and they have had the freedom to make a well-informed decision.

**The Vice-Chair:** Thank you, Ms Witmer. Further discussion? Mr Offer.

**Mr Offer:** I'll be very brief. I think the response by the parliamentary assistant to this amendment is extremely weak. We have to ask ourselves, what is the organizational difficulty in having the labour relations board determine a notice which outlines the rights of employees?

Interjections.

**Mr Offer:** It's a foul ball.



**Mr Randy R. Hope (Chatham-Kent):** Let Hansard note that everybody laughed.

**Mr Offer:** I seem to have been distracted by government members.

What is the difficulty in the posting of that notice in an area where all employees will be able to see it? I guess the point I attempt to make, and I will leave it at this, is that to give some right to an individual under an act is not sufficient if you don't tell the person what his or her rights are. It's not enough to say they can call some telephone number. That isn't enough. There must be the obligation in legislation to tell a worker what his or her rights are. The posting of notices would further that.

We will be calling a vote. We'll be calling a vote to see whether the government members are in favour of giving workers the right to know. That's what this first amendment is: the right to know.

**The Vice-Chair:** Thank you, Mr Offer. Further discussion?

**Mr Offer:** I would like a recorded vote on this.

1610

**The Vice-Chair:** All those in favour of Ms Witmer's motion, please indicate. Those opposed?

**Ayes—2**

Offer, Witmer.

**Nays—6**

Hayes, Hope, Klopp, Murdock (Sudbury), Ward (Brantford), Wood.

**The Vice-Chair:** The motion is defeated.

**Mr Offer:** I have a motion. I move that section 8 of the act, as set out in section 8 of the bill, be amended by adding the following subsections:

"Notice of organizing drive

"(8.0.1) A trade union that wishes to attempt to persuade employees of an employer to join a trade union shall promptly give written notice to the employer of its intentions upon beginning to do so.

"Notice to employees

"(0.2) Immediately upon receiving the notice, the employer shall post notices in a form approved by the board describing the rights and obligations of the employer, the trade union and the employees under this act. Notices must be posted in each workplace that may be affected by the activities of the trade union.

"Communications

"(0.3) Once notice has been given and until a representation vote is held or the trade union ceases to attempt to persuade employees to join it, the trade union and the employer shall,

"(a) ensure that a representative of the board attends each meeting that either of them has with the employees that the trade union is attempting to persuade to join the union for the purpose of discussion the attempts; and

"(b) provide the board with a copy of all materials distributed to the employees with respect to the attempts."

**The Vice-Chair:** Thank you, Mr Offer. I would guess that you wish to speak to the motion.

**Mr Offer:** It's a motion which has three areas that I want to address. The first is that there is an obligation on the part of a trade union that if it wishes to organize particular workers that it must inform the employer. What does that mean? It means if you're going to organize, let's do it in the open.

Secondly, the employer upon receiving that notice also has an obligation. We can't have it imbalanced. The first is the obligation on the trade union to inform the employer. The next is the obligation on the employer to make certain each of the employees know their rights and responsibilities.

I am not saying that the notice should be in a form prepared by the employer. I believe it is one which must be approved by the labour relations board. Why? Because we heard that in a variety of ways some instances of intimidation and coercion may seep through in an organizing drive and I don't like it and I think that we have an opportunity to change that and we can do that by having a form approved by the labour relations board which gives to the employees the right to—

**Mr Hayes:** Yeah.

**Mr Brad Ward (Brantford):** Home run.

**The Vice-Chair:** Proceed, Mr Offer.

**Mr Offer:** Thank you. I just noticed that the government members were applauding my comments.

**The Vice-Chair:** Sometimes they're difficult to restrain, Mr Offer.

**Mr Offer:** However, a notice will be approved by the board and there is an obligation on the employer to post that notice in a form approved by the board so that all employees are apprised of their rights.

What is the difficulty in that: first, obligation on the trade union to inform the employer and, second, immediate obligation on the employer to inform the employees in a form approved by the Ontario Labour Relations Board? This, to me, sets in motion openness, discussion, cooperation. It is different from what is in Bill 40, which I believe carries on organizing in the shadow. I believe that these first two areas of my three-part amendment set a new flavour to organizing; organizing in the open, organizing with information as to a person's rights.

The third area deals with communications. I will tell you, we heard lots of submissions on this. We heard that in some instances there is coercion and intimidation and misinformation. We heard in our public submissions that this takes place not only on behalf of the employer but, in instances, through the trade union organizers.

We better start talking about those things, because people had the courage to come before our committee and talk about them. They had the courage to sit down at a committee and say, "Listen, I've been an organizer for X number of years, and there has been coercion." That took courage. There were others who came forward and said, "Listen, there has been intimidation and coercion from the trade union on occasion."

I don't believe we should paint all of those organizers with one brush, but I'll tell you something: It's about time we give some real credence to the people who came before a legislative committee that was televised and who spoke

of their particular experiences. For us to turn our back on what they said in committee, for us not to allow their concerns to be met in a legislative framework is, I believe, something which will seriously, critically and fatally flaw this bill. People came before us, they told us their experiences, and so this third area talks about that whole issue of intimidation and coercion and fear.

I do not delude myself to believe that one section is going to do away with it all, but I firmly believe that we can't turn our back on the people who came before this committee; that we have to have in legislative form that if there is any communication, it must be, firstly, approved by the board and, secondly, distributed in the presence of the board. That's the least we can do, the very least to give to the workers of this province. That's the least we can do to the many people who came before this committee and told us their experiences. We can't turn our back on those presentations. We can't leave those workers and employers to fend for themselves. We can't say that what took place in the past will continue, because this act does nothing to stop it. We must give credence to what we heard.

1620

People said they had been intimidated. We heard people who said they voted one way because they feared for their job. We heard people say they thought when they signed a union card it would entitle them to a vote, and we know that is not a true reading of the bill and of the act. Are we going to turn our back on those presentations?

Communications, the third aspect, says any information given to an employee by an employer or by the trade union must be approved by the board, by the referee. Secondly, it must be done in the presence of a board member, because we've heard that you can sort of give the message and that the way in which it's given sends out a different message. This amendment seeks to correct that. It seeks to give some legislative response to the people who came before the committee. You know what? I hope the government members accept this amendment.

**The Vice-Chair:** Thank you, Mr Offer. Further discussion?

**Mrs Witmer:** I will certainly be supporting this amendment. In some ways it's similar to the one I just presented regarding the notice of organizing. Given the fact that the government has decided to restrict the right of individuals to oppose union certification and prohibit petitions, it becomes absolutely essential that the organizing process be opened up and that members fully understand, as well as employers, that an organizing drive is taking place. This also would ensure that any undue influence from any outside party, whether another employee, an employer or the union, is totally eliminated.

So I would certainly support this and I believe it's absolutely essential if we are concerned about the many people who told us that there was intimidation and secrecy in the organizing drive, which was a very frightening experience for them.

**Ms Murdock:** It is very similar to the motion we previously discussed. Mind you, in this instance, it's information to the employer and posting of information and it

would require the union to give notice to the employer of its intention to commence an organizing campaign.

Mr Offer has stated that we can't turn our backs on the presentations that came before us. I agree. I sat here and listened to the presentations during the hearings; I didn't do a particular count on them, but far and away the majority of the statements made in regard to intimidation and concerns about being coerced or being made to feel like they should vote a particular way came from the labour side.

In fact, one was related where, although the employer didn't actually do anything, the president of the company came down and stood by the door as people went in to do a vote on a representation vote. While we might not see that as intimidation, it was evident that the presenter making the statement felt it was and that some of the people felt compelled to vote against the union.

A representative of the board being required to attend each meeting of either the union or the employer would indicate that the trade unions would have full information as to numbers, when these meetings were being held and so on, and there's nothing in here on that.

The board would also receive copies of all information distributed by the union and the employer. That makes eminent good sense except that—and it was evident during the hearings and again today in both the previous motion and this one—it seems the premise everyone works on is that the unions aren't already providing information, that the unions aren't representing themselves in a particular way, explaining about union dues, explaining what kinds of deductions are going to be made, how much it costs, what rights they have under that particular local etc.

Later on, not particularly sections 1 and 3 but when you look at section 6 under this section 8 of the bill, you will see that if there has been any contravention, fraud or misrepresentation by either side, the board will be able to move on that.

A similar notice of requirement was proposed—again I'm going to say this—by Burkett, with a tie-in to the employee lists; we rejected that. Then in the discussion paper a separate suggestion was to put up a notice. The employers made it quite clear during the consultations on the discussion paper that it would be seen as encouragement of a union in the workplace. They made it really clear that they were not in favour of that and, as a consequence, we did not include this in the amendments.

Again, toll-free information lines, expansion of the Working in Ontario booklet.

Overall, when you come right down to it, this motion would make it very similar to the representation campaign that is prevalent in the United States. It assumes that unions and employers have equal access to employees, that unions and employers have similar control over the livelihood of the workers. Experience with representation campaigns in the United States has shown that they prolong the organizing process. The other thing it shows is that the proliferation of unfair labour practices holds a board up even more, also that one out of 10 employees will be fired during this campaign, even though it's open, with notices and unions having the right to speak to the employees at full meetings and so on. In our view, if that's



the trend, it would make the worker even more vulnerable than the worker is already today under the existing legislation, and we're not prepared to do that.

**Mr Offer:** I'm astounded that the parliamentary assistant would think that to inform workers of their rights will cause difficulties. That's what you just said. My amendment says, "Let the workers know what their rights are under the Labour Relations Act." There's no difficulty in that. Your response is: "We can't do that. That will cause a certain amount of difficulty." That's like saying the one way to curb the backlog in the Human Rights Commission is to take away the right of those individuals to know what their rights are. It's ludicrous in the extreme. It's absolutely ludicrous to say that there is something fundamentally flawed in a system that gives workers the right to know what their rights are.

Another thing: The parliamentary assistant has read, I am sure—I will suppose—all of the amendments by the Liberal Party and the Conservative Party. The parliamentary assistant will know that these amendments, because we must deal with them in this way, are part of an overall regime, that there is an awful lot more that goes into the system that is planned. But really, to say that there is something wrong in giving workers the right to know under the act, in letting them know they have the right to change their minds pre-application, in letting them know there are penalties if an employer or trade union intimidates, coerces or misinforms, in letting them know of the penalties that could be laid on people who do intimidate or coerce, in letting them know of each of the groups' position—somehow that seems to the parliamentary assistant to be fraught with dangers. Well, let's have a vote.

1630

**The Vice-Chair:** Further discussion?

**Mrs Witmer:** It's certainly regrettable that the government refuses to support the notion that employees should be fully informed as to what is involved in the nature of joining a union. I can't believe that there would be a problem. We talk about empowering individuals, and certainly this would enable them to be empowered and to make a well-informed decision. Why that is impossible I just don't know.

I guess the only thing that's becoming clearer and clearer to me—and I have to tell you I do feel very frustrated and I do feel very discouraged—is that the intent of Bill 40 is to facilitate unionization. I do not believe that it is in any way, shape or form intended to protect the individual rights and freedoms of the individual worker. That is totally lacking, and I'm very disappointed that the government is not concerned about the individual, because Bill 40—unionization—totally changes the employment relationship. I believe employees are entitled to have that information before they make a decision.

**The Vice-Chair:** Further discussion?

**Mr Offer:** I would like to just ask the parliamentary assistant one question. Where in the legislation, either in Bill 40 or in the amendments that have been provided by the government or in the current Labour Relations Act, is there something which mandates someone to inform a worker of his or her rights under the act in an organizing drive?

**Ms Murdock:** There's no legislative proposal mandating.

**Mr Offer:** Then I just want to vote, thank you very much, and I want this vote recorded.

**Ms Murdock:** Nor was there in the existing Ontario Labour Relations Act. There never has been a requirement mandated by any government, Progressive Conservative, Liberal or otherwise, for any of this to be done, and there was certainly lots of opportunity for that to have occurred.

**Mr Offer:** Except you're looking at two sets of amendments that would allow that.

**The Vice-Chair:** All those in favour of Mr Offer's motion, please indicate.

**Mr Offer:** I would like a recorded vote.

**Ayes—2**

Offer, Witmer.

**Nays—5**

Hayes, Hope, Klopp, Murdock (Sudbury), Wood.

**The Vice-Chair:** The motion is defeated.

**Mr Witmer:** I move that clause 8(1)(b) of the act, as set out in section 8 of the bill, be amended by striking out "on or before that date" in the fourth and fifth lines.

Again, this is intended to give individuals the opportunity to make a choice. The intent of this amendment would allow the board to consider evidence, that is, petitions, after the certification application date.

We talk about the fact that employers were not asking for this; nobody wanted this during the hearings. I can tell you that this has been asked for by both the More Jobs Coalition and the Ontario Restaurant Association. Actually, I have two amendments that deal with petitions, and there is a companion amendment as well.

As we know, at the present time the post-application petition is the only way an individual employee can express his or her desire not to join a trade union. Now we have the government eliminating petitions, even though in the past they've always led to a free and a democratic vote on the issue of certification. We've said that organizing campaigns are often carried on with secrecy. We've tried to open up the process.

The government has refused to accept our amendments to make sure that employees are fully informed and that the process is open and kept honest. Unfortunately, unlike a consumer sales campaign, there is absolutely no legislative provision at the present time to ensure that the worker understands the obligations that he or she is assuming and has a chance to revoke a decision under pressure.

Without legislative protection, unions have no responsibility that requires them to advise employees of relevant information—we've talked about that—such as the amount of dues, their disciplinary procedures. You know, unions are able to tell any prospective member anything. They can exaggerate; they can minimize. Employers have that opportunity too, and it's absolutely essential that somehow you get the facts out on the table.

Frequently, because there is no obligation now to get the facts out on the table and have an open process, it's not

until after the application for certification is filed that there's any meaningful employee opposition, because it's only after the fact that employees begin to talk, exchange views, ask questions, and they get a more balanced picture of what it means to be represented by a union.

If you are not going to open up the process beforehand and the government has indicated it's not going to, then you've got to permit employees a period of time following the filing of the application to file a petition to make sure that they know what they're doing and that they are informed as to what's involved.

I believe to deny employees the right to change their minds after they've had an opportunity for more open and balanced discussion and an opportunity to get all of the facts is to prevent an informed decision, and it undermines the requirement of representativeness. I would hope the government would support this, since it's not going to support the open process of organizing.

**The Acting Chair (Mr Pat Hayes):** Mr Offer, a few brief comments.

**Mr Offer:** Before my comments, I wouldn't mind hearing from the parliamentary assistant as to whether this amendment is agreeable. It may make my comments shorter.

**Ms Murdock:** Okay. Section 8 of the bill, as we know, and (1)(b)—it's interesting, you're removing that, but I don't know what date you would put in place of that section. You've stated a number of times, or Ms Witmer has, that petitions have been eliminated, and they haven't been eliminated.

You cannot do it after the application date, but in many instances the organizing drive lasts quite a long time and the employees have the right to notify the board at any time up to the application date whether they've changed their mind or not.

This motion would permit the board to consider evidence of the membership or the opposition to membership in a union following that date of application. A later motion that will be coming up from the opposition—I think there are a couple—will indicate the order to permit the filing of petitions at any time.

However, I guess when you look at the history at the labour relations board in terms of petitions, and we talked about this during the hearings, although not to any detailed extent, they're filed in about 20% of all applications, and the result is, as we've stated a number of times, litigation, delay and extra costs.

Yet out of those 20% of petitions that are filed, upwards of 90%, in fact over 90%, of them are rejected by the board because they do not affect either the union's level of support or, and this is unfortunate, they have been found to be influenced by the involvement of the employer.

We're not taking away the right of employees to change their minds. It is, however, bringing Ontario again into line with other jurisdictions in restricting petitions to the pre-application period only. I believe we asked research to get us some information on that and it is shown that we are one of the few jurisdictions that allow petitions

and we're getting in line with the rest, so we're not going to be supporting this motion either.

1640

**The Vice-Chair:** Further discussion?

**Mr Offer:** Right now, employees have the right to change their minds. These are referred to as petitions, and I don't like to refer to these things as petitions. What they are is the right of an employee who has potentially signified at any earlier time that he or she wishes to join a union and now has changed his or her mind and vice versa. That's what we're talking about.

**Ms Murdock:** Right. What do you mean, "and vice versa?"

**Mr Offer:** The parliamentary assistant asks about "and vice versa." Somebody may decide that he didn't want to join a union at first instance and changes his mind that he wishes to join a union. This is what we're talking about when we speak about petitions. They're the rights of individuals to change their minds, something which I would have thought is a given.

However, the government, under Bill 40, is saying that the individual's right to change his mind is being taken away after the application has been filed. But the government will say it is still allowing the individual to change his mind at any time before the application is filed, all of which is absolutely correct, except there's a small flaw in this, because the government steadfastly refuses to put in legislative form notice to the employees that they have that right. There is no legislative requirement for anyone to inform any worker in this province that he has the right to change his mind until the date of the filing of the application.

My concern has been that this right, even though it has been limited to the pre-application stage, is in fact no right at all, because if you don't know you have this right and if there is no requirement to be informed of that right, then you will never seek to exercise that right. The government has again taken away the rights of individuals to do what is one of the most common things in this land, one which we do daily, and that is second thought, changing your mind.

**The Vice-Chair:** Further discussion? All those in favour of Ms Witmer's motion, please indicate. Opposed? The motion is defeated.

**Mrs Witmer:** I move that section 8 of the act, as set out in section 8 of the bill, be amended by adding the following subsection:

"Rescission of membership, etc

"(1.1) An employee may rescind his or her membership in a trade union or application to become a member by delivering a notice of rescission in writing to the trade union within three days after becoming a member or applying to become a member, as the case may be. An employee who rescinds his or her membership or application shall be deemed not to have been a member or to have made an application."

The intent of this amendment I think is obvious. It is intended to give Ontario's citizens the same protection in making their decision to join a union that a consumer has under the Consumer Protection Act in dealing with a door-



to-door salesperson. I don't know how anybody could argue that.

Also, for your information, there were numerous presentations during the summer making this request. The Canadian Federation of Independent Business made this request, the Ontario Mining Association, as well as Tourism Ontario.

Let's talk about the Consumer Protection Act. It does provide a cooling-off period of three days, during which an individual can rescind his initial decision to purchase without any penalty whatsoever. We strongly believe that the same cooling-off period should apply to the signing of a union card, because the signing of a union card has a much greater significance in the life of an individual than does the purchase from a door-to-door salesman. We know that the signing of a union card is going to significantly change the employment relationship. It's unbelievable that consumers are protected at the present time from high-pressure door-to-door salesmen by this three-day waiting period yet the government is not prepared to provide the opportunity for sober second thought to the worker who signs a union card.

As we've said so often before, employees are often unaware of a union organizing drive until after the union has made an application to the board for certification, because all that unions need to do is sign up 55% of the employees in the unit. The others can be totally and blissfully unaware. The elimination of post-application petitions will prevent these employees, who are unaware of a union organizing drive until after the union has made an application to the board for certification, from ever having any voice on the issue of certification.

So we are strongly supporting this amendment, which would allow the individual to freely make a choice and make an informed decision.

**The Vice-Chair:** Thank you, Ms Witmer. Further discussion?

**Mr Offer:** Mr Chair, I wouldn't mind hearing from the parliamentary assistant.

**Ms Murdock:** Certainly. I'd be happy to. I guess I'm sitting here having difficulty believing you could believe that an organizing drive could take place in a workplace where it wouldn't be talked about, and that they wouldn't have a clue that it was even happening. Human nature being what it is, just thinking about it is laughable.

But, having said that, in regard to this, petitions or revocations, whichever you want to call them, changing your mind, currently brought before the board are not considered to be resignations but are considered by the board to be private between the union and the individual.

What all these motions and amendments are recommending, basically, is that the board get involved even before it gets involved now, which again would involve inordinate amounts, I would imagine, of time and money.

But we're sitting here and saying that representatives of unorganized employees have not identified the current process—which is the way it has been done since 1950, with cards—as being of concern and have not called for this sort of amendment. If anything, there's been pressure to eliminate petitions entirely, because of the window they

provide for interference in the organizing process. We heard enough stories during the hearings to indicate that there is interference.

1650

I think some of the questions that were asked by our side, anyway, in terms of the information that was provided by the union organizers—and it was made pretty clear during the hearings that it isn't the union organizer from the union that they're going to be going to who is asking the employees to join a union; rather, the union organizer provides the information to the coworker who goes into the workplace and explains it and tries to identify the coworkers, if he doesn't know who they are, and tries to find out who they are and through themselves organize themselves into a union which comes under a larger umbrella group.

I don't think I am an unintelligent person, but I'm finding it very difficult to understand why the motions that are being suggested by both the opposition parties would be felt to be needed, unless they think that the employees have no ability on their own to question or to ask questions or to make a telephone call to find out if they don't know, or if they do change their mind, that they go and say, "Hey, I've changed my mind; I've decided I like things the way they are," and somebody wouldn't say, "Well, you're going to have to write a letter," or whatever. I don't think the workers of this province are that imbecilic.

**The Vice-Chair:** Further discussion?

**Mr Offer:** I don't know where to begin. The parliamentary assistant has acknowledged that there are in some instances what she refers to as interference. We do not disagree. In fact, we do agree. We heard in our presentations of examples of interference, in the word of the parliamentary assistant. It then becomes doubly difficult when one sees that the government refuses to accept amendments which attempt to, if not eliminate, then reduce interference.

The parliamentary assistant speaks of, "Well, workers talk to one another." Of course we know that, but isn't it our obligation to make certain that there is some information provided to the workers, as agreed to by the labour relations board, that if a worker and his coworker chat about something, if that worker speaks to a representative of the employer about something in an organizing drive, there should be something somewhere that will permit the worker to obtain information for himself or herself, information approved by the board?

The amendment speaks about a rescission of membership. Is there any difficulty in union cards having that information on them? Is there any difficulty when somebody signs a card, that right on the card he is given information that prior to the filing of the application he can change his mind and the place that he can do so, and also, within a shorter period of time, he can just rescind the actual membership form? Is there any difficulty in giving that minimum amount of knowledge to the workers of this province? Is the government prepared to make an amendment which deals with this issue and makes it prescribed through regulation so it is on every union membership form signed in this province? This is not to say one is in

favour or against. One is in favour or against information-giving to workers. I ask that question.

**The Vice-Chair:** Any further discussion?

**Mr Offer:** I've posed a question and—

**Mr Wood:** Is that on your Liberal membership cards?

**Mr Offer:** I'm glad there has been an interjection by a government member. I suggest that if we checked—because I know what our political association membership forms state—in fact there is information provided on each application form.

**Mr Wood:** For all those misled Liberals?

**The Vice-Chair:** Ms Murdock, do you wish to respond to Mr Offer's question?

**Ms Murdock:** I don't know how many times I can say this, but it was one of the options considered in terms of how to provide information to workers or people who might be considering applying to a union for representation. It was one we decided not to include, so I guess the short answer is no.

**The Vice-Chair:** Further discussion? All those in favour of Ms Witmer's motion, please indicate. Opposed? Motion is defeated. Mr Offer.

**Mr Offer:** Yes?

**The Vice-Chair:** Motion, section 8 of the bill.

Mr Offer moves that subsections 8(2) and (3) of the act, as set out in section 8 of the bill, be struck out and the following substituted:

"Representation vote

"(2) The board shall direct that a representation vote be taken if it is satisfied that at least 30% of the employees in the bargaining unit are members of the trade union on the certification application date or have applied to become members on or before that date.

"(2.1) The representation vote must be taken by secret ballot and must be held within 30 days after the certification application date.

"(3) The board shall certify the trade union as the bargaining agent of the employees in the bargaining unit if more than 50% of the ballots cast in a representation vote are cast in favour of the trade union."

Mr Offer, I'm sure you want to speak to the motion.

**Mr Offer:** I do wish to speak to it. I'm wondering if it's in order to ask if the government—

Interjection.

**Mr Offer:** Okay, then, I'll speak. The parliamentary assistant—I'm going to speak to it. As I read the motion—

**Ms Murdock:** You spoke to it yesterday, actually, if I remember correctly.

**Mr Offer:** Here we have three points that I wish to make. Now, the problem with clause-by-clause is that the whole system we are attempting to deal with is sort of dealt with on a clause-by-clause basis. I just remind members that I recognize they voted it down, but the first part of the new procedure was: organizing drive; the union informs the employer; the employer is under an obligation to give notice to the employees of their rights in a form prescribed by the Labour Relations Act, and all communications

thereafter be basically approved by the labour relations board in the presence of a member of the board.

Then we move to this point: If the union has signed up 30%, then that becomes the trigger point. We know the current act is 45%. We know that under the current act, if the union has signed up 45%, it acts as a trigger to at least get a representation vote. We know the amendments to Bill 40 have lowered that trigger from 45% to 40%. My amendment is seeking to further lower the trigger from 40% to 30%. In other words, if a trade union has signed up 30% of the workers in a workplace, then it has met the trigger point.

**1700**

Why do I pick 30%? I pick 30% for two reasons. First, I believe 30% is a percentage in a workplace that shows a sufficient level of support for unionization that should warrant a vote by all members. Second, I believe if the trigger point is lowered, then all the difficulties that are experienced in the signing of members must of necessity be reduced. There is less opportunity for intimidation, coercion, misinformation and fear if the trigger point is reduced from 40% to 30%; if the trigger point is reduced from 45% to 30%. There's less chance for interference. Hence, I say, let's move into a new era.

Speaking on this issue, I do so in support, of course, of my amendment, but with some concern, because I view my amendments as a package in this section. I'm concerned that to give one part and not the other might not deal with the issue as effectively as I hoped. None the less, I am moving this. So we move 40% to 30%.

Then we move into the second part of my amendment. The vote must take place within 30 days after the application. Why? I'm basing this on the presentations I heard. I believe 30 days is a sufficient amount of time for the employees in the workplace to be informed of the pros and cons of the drive, to be informed of the position of both trade union and employer. Again, I hark back to my earlier amendment, where I wanted this communication package to be done in a system of protection for the worker. The 30 days, I believe, is a sufficient amount of time.

Third, certification, 50%: I want government members to recognize that 50% is an amount everyone understands. We're here on the same principles. That's what we're here for. We've heard other leaders of provinces say that a new Constitution will be approved if we can get a majority in each province. It's something that people understand, that they've grown up with, that they believe in and, in this country, are in fact proud of.

I'm saying, let's put it in. I did not say 50% of the ballots of all the people who were entitled to vote. That would be a little bit of a tricky situation. I am saying that if there are 1,000 members in a unit who are able to vote and only 500 actually cast a vote, and of those 500, 251 say yes, then that workplace is unionized, is certified.

There are three parts to this amendment: representation to 30%, secret ballot vote, certification on majority.

I think it's only fair for me to indicate that this, of necessity, would also exclude automatic certification. I think I have to be fair about that and inform members I am also excluding automatic certification. I'm doing so because I



think this process is fairer, is more balanced, is better for the workers. They don't have to feel the pressures of signing or not signing over and above 30%. I'm sure there's great pressure, but we're reducing that. We're excluding that 55% automatic certification. We're folding in a new way. We're folding in a way where there is a minimum number of workers—adequate numbers, mind you—information to the employees, and then letting the employees decide through a secret ballot.

I think we've heard this issue many times. I think there will be those who say, "Something like this is in the United States and it's caused some difficulties." This is not the United States; this is a thing that we can, in a process, implement in this province. Following this, I have penalty provisions for trade unions or employers who contravene these sections, and I think they are significant penalties that will again ensure, if not an elimination, then a real reduction in—I'll use the word of the parliamentary assistant—interference in organizing campaigns.

I guess I'm somewhat fearful that the government will not accept this amendment, somewhat fearful that it will not accept that the trigger point be reduced from 40% to 30%. I'm fearful that the government will not accept a worker's right to cast his or her choice in a freely secret manner, and I am fearful that the government will not accept the principle that majority rules. We will see when this is called for a vote.

1710

**Ms Murdock:** It's interesting that Mr Offer is fearful when I prefaced his remarks in my comment that we were not going to be supporting this motion.

**Mr Offer:** I thought you might have changed your mind after the explanation and the benefit that it would be to all in the province.

**Ms Murdock:** Well, for five weeks you've been giving the explanation and I've listened with care to it. However, although I like the idea that it go down to 30%, I don't imagine you would be willing to let that stand by itself, so I'm not even going to suggest that.

I've already explained, yesterday, and I won't belabour the point, in terms of the time factor in counting ballots.

The 50% plus one is sort of interesting because we recommended that in the discussion paper and the business community came forward saying they wanted it to be left at the 55% that exists in the Labour Relations Act already. They didn't like the 50% plus one, so we acceded to their wishes and left it at 55%.

The representation vote: I've explained on numerous occasions but will take the time to briefly explain it again today. It is basically saying to the employee who has taken the time to sign a card—as Mr Offer and Mrs Witmer have stated today, oftentimes this is done in the darkness of the night kind of thing, or with that attitude. It is not a frivolous kind of haphazard signing. This is something that they have thought about before they've done it. Unfortunately, it's still a situation where the repercussions of signing a union card in the workplace have great import to many workers. So there's that.

I explained the secret ballot yesterday. I used the example of the Hydro case and the taxi drivers, where it took two years to count the secret ballot, because as it stands right now in this province under the existing Labour Relations Act, there are secret ballot votes between 45% and 55%. Under this amendment it will be from 40% to 55%. So there is still a secret ballot vote, and that anything over 55% is automatically certified is not changing. It's been that way now for a number of years under the present OLRA and it will continue with Bill 40. That will not be any different.

You haven't convinced me, Mr Offer and we will not be supporting this.

**The Acting Chair:** Mr Ward has been very patient here in trying to contribute.

**Mr Ward:** Thank you, Mr Chair. I'll be brief in my remarks because I can recall yesterday, I believe, expressing my concerns for the concept of a totally secret ballot process in the certification method of having employees decide whether to have a trade union represent them or not. The concerns I expressed at that time were the hidden intimidation and coercion activities that could occur in the workplace that all the legislation in the world would never eliminate.

I think that to have intimidation and coercion eliminated, we need very mature labour relations in this province, and I don't think we're there yet. With the advent of Bill 40 and updating the Ontario Labour Relations Act into the 1990s, and indeed the 21st century, I think we'll be on the road to establishing those mature labour relations so that some day, perhaps, intimidation and coercion on the part of employers will be eliminated. But we're not there in 1992.

I notice in this amendment that there is no avenue for a trade union representative to go on to company property to express his or her views on the benefits of joining a trade union. I'm wondering if that's an oversight on the part of the Liberal member in this amendment, because I think that with the all-encompassing three parts to this, that's one part that is missing. I'm wondering if the Liberal member will be considering that down the road.

The dilemma I'm in is that the Liberal member made very compelling arguments to reduce the ability to have a certification vote from what we're proposing, from 40% to 30%. I think he made very good arguments. Although we heard from the business community that it was totally opposed to lowering the percentage from even the current 45% to what we're suggesting, 40%, the Liberal member is proposing 30%; if 30% of the employees in a workplace have signed a union card, then a vote can take place. So I'm requesting that the Liberal member allow three separate votes on this amendment so that perhaps we can join with him, contrary to what the business community said.

But we can perhaps consider the reduction to 30%. Then, since I do have concerns for the other two, defeat those two, and at the Liberal insistence, perhaps contrary again to what the business community had suggested—we have to listen to both sides of the issue of labour relations—I may be swayed to lower the 40% to 30%; I'm still

weighing it in my mind. If we could have a separate vote so I could defeat the last two sections of this amendment but adopt the first Liberal part of the amendment, I may be swayed to support him.

**The Acting Chair:** Mr Offer, are you willing to respond?

**Mr Offer:** Mr Chair, there are two points I'd like to make and I thank the members. The first point is: You spoke about communications. It's unfortunate that your party defeated my previous amendment, which permitted communications to be held by the trade union and by the employer with employees in a manner which was permissible by the Ontario Labour Relations Board. Your government, your members, already voted that down.

With respect to the second point, that's quite a novel suggestion the member has. And you know what? I am not terribly adverse to that type of split vote. But I will do one thing, and I would ask you to rule, Mr Chair: We will vote separately, but I would like the vote to take place in inverse order to that which appears in this section. First we will vote on the certification of 50%, then we will vote on the secret ballot and then we'll talk about 30%.

**The Acting Chair:** Mr Offer, what you'd actually—

**Mr Offer:** If the members are not permitted to do that, then I am absolutely flabbergasted.

**The Acting Chair:** Excuse me, Mr Offer. I don't think you can break it up like that. What you would have to do is to amend the amendment if you wanted it to read 30%. Of course it appears that the next motion we'd be dealing with would be the PC motion, which states:

"The board shall direct that a representation vote be taken if it is satisfied that at least 40 per cent of the employees in the bargaining unit are members of the trade union on the certification application date or have applied to become members on or before that date."

If you were willing to go along with the 30%, you could amend that. That's what you could do, but you'd have to amend the amendment.

**Mr Offer:** Mr Chair, I've listened to what you're saying and I want to be certain your ruling is that it would not take place on my amendment, but rather that there could be an amendment to the following motion. That, of course, could be made by Mr Ward himself. It's unfortunate that we weren't able to deal with it in a piecemeal fashion, because I certainly would have liked to have got the voting procedures of the government on majority rule and secret ballot.

1720

**The Acting Chair:** There would have to be an amendment to the amendment in order to accomplish that.

**Mr Offer:** Mr Ward is able to do that.

**Mr Ward:** It's my amendment.

**The Acting Chair:** Okay.

**Mrs Witmer:** I just want to confirm that we will be dealing next with my amendment. Will we?

**The Acting Chair:** Yes.

**Mrs Witmer:** I would certainly support the Liberal motion that has been put forward. I believe very strongly in the need for a representation vote and also for the individual worker to have an opportunity to cast a secret ballot. It's absolutely essential that workers be given a choice, and it's absolutely essential that the choice be made in a manner that is as democratic and as fair and as honest as possible. So I certainly would support this.

**The Acting Chair:** Any further discussion?

**Mr Offer:** Recorded vote, please.

**The Acting Chair:** All those in favour of Mr Offer's motion?

**Ayes—2**

Offer, Witmer.

**Nays—5**

Hope, Klopp, Murdock (Sudbury), Ward (Brantford), Wood.

**The Acting Chair:** The motion is defeated. Now we have Mrs Witmer's motion.

**Mrs Witmer:** I move that subsections 8(2) and (3) of the act, as set out in section 8 of the bill, be struck out and the following substituted:

"Representation vote

"(2) The board shall direct that a representation vote be taken if it is satisfied that at least 40 per cent of the employees in the bargaining unit are members of the trade union on the certification application date or have applied to become members on or before that date."

This is the first in a series of amendments that we are going to be introducing concerning secret ballot. You've probably noticed that we have numerous amendments. As I've previously said, we have upwards of 80, and we have amendments that go as far as section 64.

This amendment would make the representation vote mandatory, and this is the first in a series of amendments that contain the provisions of a bill that I introduced, Bill 152; it's currently Bill 76 on Orders and Notices. That was a private member's bill that I introduced on November 7, 1991, which made a secret ballot vote mandatory for certification, ratification of a collective agreement and the decision to strike.

This has been an issue that has been of tremendous concern to me because one of the first letters that I received concerning Bill 40 came not from the business community but actually from an employee in the town of Exeter. That's interesting, because it's someone that I don't know, but this individual—

**Ms Murdock:** Gee, who do you know?

**Mr Klopp:** You have to know Exeter.

**Mrs Witmer:** I say that because I grew up in Exeter, so it was rather interesting that this first letter—

**The Acting Chair:** If you give Paul Klopp his name, he can look him up.

**Mrs Witmer:** That's right. It came from an individual who had been involved in a unionizing drive and had a very unfortunate experience and did believe very strongly



in the need to ensure that individual rights and freedoms were not restricted. He was very anxious that the secret ballot vote be provided for workers in certification, ratification of a collective agreement and the decision to strike.

I would have to indicate to you that since that time, I have received numerous letters of support for this amendment from individuals, and they have come from all across the province. There has been tremendous support for the Bill 152 that I introduced last November, and I was really pleased when finally the Liberals and the Liberal leader started to support this issue so strongly as well this summer and fall. I realized I obviously was on the right track.

**Ms Murdock:** Well, gee, I don't know, Elizabeth, your judgement there—

**Mr Offer:** That I want in Hansard.

**Ms Murdock:** With the laughter in brackets.

**Mrs Witmer:** In fact, someone said to me—obviously, they've become aware of the fact that this is a very popular issue and you're being very widely supported, so they're now anxious to get on the bandwagon as well. I would add that.

**Mr Offer:** Ms Witmer throws down the gauntlet.

**Mrs Witmer:** However, the bill is designed to protect the individual's right to decide, as I have said many times, free of interference or influence from any source, whether or not to have union representation, to accept a contract or to go on strike.

This becomes more important because Bill 40 eliminates post-application petitions by employees, and we've certainly talked to that issue. It's also important to have a representation vote, because we've now eliminated the opportunity for employees to have a sober second thought, and once they sign a union card, they don't even have the same protection that consumers do with the three-day cooling-off period.

The vote becomes more important because Bill 40 eliminates the membership fee of \$1, and without the payment of a fee, there's always the possibility that the worker might be signing a union card without really recognizing the importance of his or her signature.

This representation vote becomes more important because we have now voted down our proposal to make it mandatory that the union provide employees with copies of recent collective agreements, the union constitution, disciplinary procedures or information on the amount of union dues payable. We've eliminated the opportunity for employees to make an informed choice, so it's important that we at least have a secret ballot vote and that it be mandatory.

It's important because Bill 40 makes certification possible based solely on the number of cards that are submitted. There's no longer a minimum payment; there's no longer an opportunity to revoke a signature after the application; there is no right to change one's mind; there is no way of knowing whether people knew what they signed, and there is no way of knowing what they were told or what promises or inducements were made.

Bill 40 appears to say to the individual whose rights we're now taking away and restricting: "We don't care about democratic choice, We don't care about due process.

We don't care to ensure that the true wishes of the employees are known." It appears that all we're concerned about is making it easier for unions to certify, so by giving individuals the opportunity to cast a secret ballot vote, we are indicating our concern for democratic choice, we are demonstrating our concern for due process, we are ensuring that the true wishes of the employees are known and we really are demonstrating that we care.

If you look a little beyond the individual and take a look at the impact of Bill 40 on job loss and future investment loss, if you include an automatic secret ballot vote on all certification applications, as we've suggested, it is something that provides a message to those investors, because they might see that in some ways you are trying to restore the balance, that you are interested in democratic choice and the rights of individuals.

We must never forget that the rights of employees should always outweigh the rights of trade unions. It's totally undemocratic that any employee could find his or herself a member of a union without being given the opportunity to vote, yet that's what Bill 40 does. No employee should ever arrive at work to discover that she or he belongs to a union which she or he didn't vote in favour of joining, and that's what's possible right now. This is totally unacceptable. It's a violation of our most democratic rights and freedoms not to have the opportunity to vote, to have a secret ballot.

1730

I keep asking myself, why does the government not want a secret ballot vote? The government purports to represent the interests of the working people in this province, and yet it's not giving those people the opportunity to be informed on the issue of unionization and what is involved, and they're not being given the opportunity to exercise their right to make a free choice by means of a secret ballot vote. I just cannot understand why the government refuses to allow a secret ballot. John Crispo, in his presentation to us, made the statement that they don't want votes because they don't think they can win. Perhaps there's some truth in that.

I'm so concerned because the government appears not to be interested in ascertaining the true wishes and desires of workers. It's absolutely essential to have a secret ballot vote because, as I said before, the certification of a union dramatically changes the workplace. When a union is certified, it is granted exclusive bargaining rights and the individual workers lose any individual right to bargain with the employer. So unionization is a critical choice for workers. It should be made as democratically, as fairly and as honestly as possible.

I guess my concluding remark would be a question: Why is the government so afraid and opposed to a properly conducted secret ballot? After all information has been presented to the parties involved, why are you not respecting the rights and freedoms of the individual to make a choice?

**The Vice-Chair:** Ms Murdock, do you want to respond to that?

**Ms Murdock:** No. I've responded to it numerous times already on the record.

**The Vice-Chair:** Further discussion? Mr Offer.

**Mr Offer:** I see this amendment as directing a representation or a secret ballot vote to take place if 40% of the members have signed union membership cards, and I certainly understand the background to this. I just feel that it is an argument to be made in vain. When the government has already rejected a vote with a 30% threshold, why would it accept a vote with a 40% threshold?

**Ms Murdock:** I would say that's very astute of you.

**Mr Offer:** Thank you. It is clear that the government is adamantly opposed to secret ballot votes. It doesn't matter what the percentage is. It doesn't matter whether there be a percentage at all.

**Ms Murdock:** You know that's not true.

**Mr Offer:** The government members are adamantly opposed to workers in this province having the right, freedom and privilege to cast a vote as to how their workplace is going to be governed. Think about that.

**Ms Murdock:** There is a secret ballot vote already. You know that. Between 40% and 55% already have a secret ballot vote, so the government is not opposed to a secret ballot vote.

**Mr Offer:** The government is totally opposed to a secret ballot vote, because a secret ballot vote is premised on information, it's premised on the absence of fear and intimidation, it's premised on the fact that majority will rule, and the government and the government members have consistently voted against amendments which seek to institute and insert provisions of protection for the workers of this province which are not now in effect. I have no doubt that when the vote is called on this, the government members are going to vote against. They're going to vote against because they voted against 30%. If this read 20%, they would vote against a secret ballot vote, and if this were 10%, they would vote against members voting and being allowed as employees to cast a vote.

**Ms Murdock:** Yes.

**Mr Offer:** They would be against employees in this province freely, secretly deciding how they wish their workplace to be governed. It is something which is going to be shackled on the necks of the government for the duration of your term. You are going to have to explain why you are opposed, and I will tell you something. It isn't enough to say, "It's pretty tough to count those ballots."

**Ms Murdock:** I'm not saying that. I'll explain. Because this would require—

**Mr Offer:** Mr Chair, if I could finish—

**The Vice-Chair:** Ms Murdock, Mr Offer has the floor.

**Mr Offer:** Thank you. It isn't enough to say, "It's pretty tough to count those ballots," because what you are doing is using examples of another year at another time and you are not admitting that what we are doing is attempting to institute a new process where the difficulties of the past are lessons that are learned so that in the future we have a process where those difficulties do not exist, where workers are able to cast a vote. You cannot say that because somebody had a difficulty five years ago, it means

they will have that same difficulty in five years. It's not intellectually fair, because what we can do is institute a new process so that the difficulties of the past do not have to be followed in the future.

Bill 40, without any question, is a major step backwards. It takes away the rights of workers. Any piece of legislation which takes away the rights of part-time and full-time workers to determine how they are going to be governed, which takes away the rights of workers in existing bargaining units to decide among themselves how they are going to be governed, which takes away the rights of the workers, every worker in this province, to decide how he or she wishes to be governed, is not a step forward. This bill doesn't help. This bill creates roadblocks to cooperation and consultation.

But I will say—and I have had some difficulties, and let me put it on the record—I've had difficulties with Ms Witmer's amendment. Let it be clear: My party is not following that amendment, because that amendment seeks one thing, in that it seeks to abolish automatic certification. That's all that amendment does. It seeks to eliminate automatic certification, without any countervailing right extended to workers of this province.

I understand the principle behind the amendment, and I agree with the principle. I wish the government would agree with the principle. I wish the government would recognize that there should be no fear in letting workers express their own opinion. Unfortunately, the government has, time in and time out, indicated that there is a fear, because you haven't given the workers that right.

1740

It's a very serious area that we're at. I was hoping we might finish this whole section today. It's a key section in this bill; it's a key section in the Labour Relations Act. I'm not pleased with the way the government is moving. I'm not pleased in the direction and the orders the Minister of Labour has given to the members. I'm not pleased that workers in this province aren't being given the rights they deserve. I am not happy that rights which all people in this province share in elections are something the Minister of Labour has sought to exclude from workers in this province over their own workplace. It's unfortunate. It's not going to enhance cooperation, consultation, or consensus and I fear for the workers of this province.

**The Vice-Chair:** Thank you, Mr Offer. Further discussion?

**Ms Murdock:** I just want to remind Mr Offer that 9 out of 11 jurisdictions in Canada, including the federal government, agree with the position the government is taking. Also, based on your comments regarding Mrs Witmer's bill, I'm guessing that you're not going to support this amendment, given that, in effect, it removes the 55% automatic certification vote.

What this does is to require a secret ballot vote in every single circumstance where an organizing drive—and yet, at the same time, it still requires the organizing persons to go around and collect all the cards. It's just unacceptable that they should have to do that.



I think our main point is that we are just falling in line with other jurisdictions and as we've used that example in other parts of this bill, we're utilizing their experience as well, not just the American experience.

**Mr Offer:** I would like to respond because I think it's important—I believe the amendment which I put forward, reducing it to 30%, having a secret ballot after that trigger, is one I favour most. I will be supporting this amendment because, even though it carries certain problems, it is still better than what is proposed in Bill 40.

Bill 40 takes away rights of individuals. At least this amendment is attempting to institute and insert rights that Bill 40 is ripping out. I believe my amendment would have gone further and it's my opinion, of course, that it meets the needs I've heard at this committee.

I'll tell you something: I have a choice. I think the direction the government is moving in Bill 40 does not help workers in this province, because if somebody doesn't have the right to choose, he doesn't have the right to freely express an opinion as to whether to be part of a union. I believe that is not in keeping with the best interests of workers.

**Mrs Witmer:** I think it's important to note that we have provided, throughout the discussion, a series of amendments on different issues. We have tried to reflect the views and we've tried to arrive at a compromise position whereby, if the government doesn't like our first alternative, perhaps they can support our second or our third.

I would just like to remind you that I have 72 more amendments that take us all the way to the end of section 64. I have just noted that the Liberals have five more amendments which take us to the end of section 13. I don't think we're going to get finished by Monday.

**The Vice-Chair:** Thank you, Ms Witmer. Further discussion? All those in favour of Ms Witmer's motion, please indicate. Opposed? The motion is defeated.

**Mrs Witmer:** Continuing with section 8 of the bill, subsection 8(2) of the act, I move that subsection 8(2) of the act, as set out in section 8 of the bill, be amended by striking out "at least 40 per cent and not more than 55 per cent" in the second, third and fourth lines, and substituting "at least 45 per cent and not more than 55 per cent."

I don't want to spend a lot of time on this amendment. It simply maintains the differential of 10% for the level of support for a representation vote and the level of support for automatic certification. Since Bill 40 does not reduce the level of support required for certification without a vote to below 55%, accordingly, reducing the level of support required for a representation vote to 40% really lacks any rationale. That's all I'm going to say to that particular issue.

**Mr Offer:** I would just like to get a clarification. Does that not just reinstate the status quo?

**Mrs Witmer:** The status quo? Yes, it does.

**Mr Offer:** Then my question to the parliamentary assistant is, given the fact that you are not going to allow workers to express their own opinions as to how their workplace is to be governed, what is the rationale for reducing the percentage from 45 to 40? Apart from the obvious.

**Ms Murdock:** You premise everything so well, Mr Offer. It's not at all one-sided or biased in any way. No, it actually initially arose when we moved from 55 to 50. We moved both of them down, 50 to 40. Then, when we reached the consultation stage and Mr Mackenzie and I were out on the road throughout the province and had so much opposition to the 50% plus 1, we maintained the 55% in the existing act; we just didn't move the 40% when we acceded to the wishes of the employers on the ceiling.

**Mr Offer:** That sounded like some sort of—forgive me—collective bargaining procedure you had gotten yourself into: "We'll see your 50 and raise it to 55; you'll lower that 40 to 45."

**Mr Wood:** It's called true consultation, Steve.

**Ms Murdock:** Truthfully, I don't think we actually thought of the floor of the amount—

**Mr Offer:** The government members say it's called true consultation, but in the end result, the law said 55 is automatic. When your so-called consultation started, the law said 55 automatic, 45 representation vote.

**Ms Murdock:** That exists in the act right now.

**Mr Offer:** That's what I just said. When you started the so-called consultation, you were working with 55% for automatic certification and 45% to trigger a vote. Now you've gone through the so-called consultation, and what are we left with? With 55 for automatic certification; 40, rep vote.

**Mr Hope:** That's what you wanted, though.

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**Mr Offer:** The question we have is, what is the rationale for moving from 45 to 40?

**Ms Murdock:** Mr Dean will respond.

**Mr Offer:** Some would say if you go from 45 to 40, then maybe you should go from 55 to 60 for a cert vote, for automatic certification.

**Ms Murdock:** I'm sure some would say that, but we're not going in that direction at all.

**Mr Offer:** I have no doubt.

**The Vice-Chair:** Mr Dean, did you have a comment to make?

**Mr Tony Dean:** The two threshold levels were considered separately; that is, there was a proposal in the discussion paper to remove the level for automatic certification down to 50% plus one, and a proposal to remove the threshold level of support for representation vote down to 40%. There was intense opposition from the business community, broad and intense opposition, to moving or relaxing the threshold level for automatic certification. There was nothing like that degree of opposition to the proposal to lower the threshold for a representation vote.

In fact, you'll know, Mr Offer, that the business community has widely supported secret ballot representation votes, and it was felt that leaving in Bill 40 the threshold level of support required for a vote at 40% would, in fact, to some extent respond to the business community's interest in seeing more votes.

**The Vice-Chair:** Further discussion? All those in favour of Ms Witmer's motion, please indicate. Opposed? Motion is defeated.

**Ms Murdock:** I move that the French version of subsection 8(2) of the act, as set out in section 8 of the bill, be amended by striking out "sur le caractère représentatif du syndicat" in the second and third lines and substituting "de représentation."

**The Vice-Chair:** Do you wish to speak to the motion?

**Ms Murdock:** The English version of this deals with "representation vote" in certification applications. The French version currently refers to votes on "representative character" of the union. This motion would change the French version to read "representation vote."

**The Vice-Chair:** Any discussion? All those in favour of Ms Murdock's motion, please indicate. Opposed? Motion is carried.

**Ms Murdock:** I move that the French version of subsection 8(3) of the act, as set out in section 8 of the bill, be amended by striking out "sur le caractère représentatif du syndicat" in the second and third lines and substituting "de représentation." Same explanation as the previous motion.

**The Vice-Chair:** Further discussion?

**Mr Offer:** When one speaks to the French version, I always thought that to change the French version to make it in line with the English was almost more of a house-keeping, technical type of situation, as opposed to a motion that might be the subject matter for discussion.

I just don't know. I'm a little concerned. Are we going to find ourselves in committees not only voting and discussing the substance of bills, but also discussing whether the French version truly reflects the English version of the bill? Mr Chair, I'm looking for—

**Ms Murdock:** We follow the lead of legislative counsel.

**Mr Offer:** I'm not going to discuss it further, except to say that this is the first time this has come to me, and it's a new area I would like to get some idea on for future bills, because we're not talking about the bill itself; we're talking about the French version of the bill being in sync with the English counterpart.

**Mr Hayes:** Is that why you refrained from voting?

**Mr Offer:** Yes, I don't know that it's absolutely—

**Ms Murdock:** If I may, sitting in legislative regulations committee going through all the legislation regulations, when we do get those bills and when legislative counsel write up the versions for us, they are to jibe one with the other, and they're to mean the same thing. If we are using the term, for instance, in this case, "representation vote," and the French version is using the terminology "representative character," it doesn't mean the same thing. It would have to be clarified in that instance. I'd rather have legislative counsel respond to the French version matching up with the English version.

**Mr Offer:** I always thought there was just an understanding, if not a motion that was made, that the French version of the bill would automatically be in sync. Of course you know what this means. It means, quite rightly,

that in fact by these amendments we deal with two bills: the English version and then the French portion.

**Ms Murdock:** Oh, come on.

**Mr Offer:** I'm not saying we should do that, but this sort of amendment caught me by surprise. I always took it as a given that legislative counsel would be attempting to make the French version in sync with the English version or vice versa, but we would have one discussion over one session.

**Ms Murdock:** We just followed their lead.

**The Vice-Chair:** If I might intervene for a second, legislative counsel is here with us. Mark Spakowski may wish to comment on the procedure.

**Mr Mark Spakowski:** The bill before this committee is in two versions. It's not just the English version that the committee considers, and any change to the French version must be done by motion. You may be thinking of motions to amend the bill, which can be moved in one language or the other, and we will make the appropriate changes in the other version. But if the actual bill needs a change in one version or the other, it must be done by motion.

**The Vice-Chair:** Thank you very much. Further discussion?

**Ms Murdock:** Pretty soon we're going to have a requirement that all elected people in Ontario must be bilingual. I'm just being—

**The Vice-Chair:** Further discussion? All those in favour of Ms Murdock's motion please indicate. Opposed? Motion is carried.

**Mrs Witmer:** I move that subsections 8(4) to 8(7) of the act, as set out in section 8 of the bill, be struck out.

The intent here, obviously, now that our secret ballot amendments have been defeated, is to allow the board to consider petitions, in other words, evidence, after the certification application date. As you know, post-application petitions are currently the only way individual employees can express their desire not to join a trade union. The government is now proposing to eliminate petitions, even though they've always provided a means for a free and democratic vote on the issue of certification.

Again, I have to remind you that oftentimes organizing campaigns are carried on in an arena of secrecy. There is no legislative provision at the present time to ensure that workers understand the obligations they are assuming. They have no opportunity to revoke their decision once they sign a membership card. There's no protection at the present time that unions would have a responsibility to inform employees of what's involved in becoming unionized, what's the nature.

Unfortunately, because of the secrecy surrounding an organizing campaign, what happens is that it's often not until after the application for certification is filed that any meaningful discussion takes place among employees. It's only then that they have an opportunity to exchange views, ask questions, get a balanced picture of what it means to be represented by a union.



If we're not going to allow workers an opportunity to cast a secret ballot vote after they have been fully informed of what it means to join a union, then I would encourage the government to consider petitions after the certification application date.

**The Vice-Chair:** Thank you, Ms Witmer. Further discussion?

**Mr Offer:** I would just like to indicate that, by any objective evaluation, this committee has attempted to move as quickly and expeditiously as possible. Let it be known that in one day we have not been able to complete the section and subsections of this bill, and that is not for

any other reason except that the bill is complex, carries impact and requires discussion.

Here we are: one day. I say this because the government has limited us to, not eight days, but in essence six days to deal with a bill, the magnitude of which, I suggest, many members are not comfortable with and informed enough about. I'll reserve the rest of my comments on that section, unfortunately, to the next day.

**The Vice-Chair:** It being 6 o'clock, we will adjourn and resume tomorrow at 3:30.

The committee adjourned at 1801.

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**Vice-Chair / Vice-Président:** Huget, Bob (Sarnia ND)

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Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgianne ND)

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#### **Substitutions / Membres remplaçants:**

**\*Hayes, Pat (Essex-Kent ND)** for Mr Kormos

**\*Hope, Randy R. (Chatham-Kent ND)** for Mr Dadamo

**\*Ward, Brad (Brantford ND)** for Mr Waters

**\*Witmer, Elizabeth (Waterloo North/-Nord PC)** for Mr Jordan

**\*In attendance / présents**

#### **Also taking part / Autres participants et participantes:**

Dean, Tony, administrator, office of collective bargaining information, Ministry of Labour

**Clerk pro tem / Greffier par intérim:** Decker, Todd

#### **Staff / Personnel:**

Fensom, Avrum, research officer, Legislative Research Service

Spakowski, Mark, legislative counsel





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Deuxième session, 35<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Thursday 15 October 1992

# **Journal des débats (Hansard)**

Jeudi 15 octobre 1992

## **Standing committee on resources development**

Labour Relations and  
Employment Statute Law  
Amendment Act, 1992

## **Comité permanent du développement des ressources**

Loi de 1992 modifiant des lois  
en ce qui a trait aux relations  
de travail et à l'emploi

Chair: Peter Kormos  
Clerk pro tem: Todd Decker

Président : Peter Kormos  
Greffier par intérim : Todd Decker

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 15 October 1992

The committee met at 1552 in committee room 1.

### SUBCOMMITTEE REPORT

**The Chair (Mr Peter Kormos):** Thank you. We're a little late starting because the subcommittee had to meet prior to the committee commencing its meeting. We have a report to the committee from the subcommittee. The report is:

"Pursuant to standing order 123, the following designated matter has been filed with the subcommittee and is deemed to be adopted:

"An inquiry into the circumstances surrounding, and the involvement of the Minister of Energy in, the sudden departure of the president of Ontario Hydro, Mr Al Holt. The inquiry to include the production before the committee of all relevant documentation from the ministry, the corporation and Mr Holt regarding the president's departure and the taking of testimony by the committee from the Minister of Energy, the chair and chief executive officer of Ontario Hydro, Mr Marc Eliesen, the outgoing president of Ontario Hydro, Mr Al Holt, and the members of the board of directors of Ontario Hydro regarding events and matters relevant to the departure of the president of the corporation. This matter to be considered for a period of twelve (12) hours."

That notice was brought on behalf of the Progressive Conservative caucus.

All those in favour of adopting the report of the subcommittee to the committee, please indicate.

**Mr Paul Klopp (Huron):** Just a minute. Is that a foregone conclusion?

**The Chair:** Yes.

**Mr Klopp:** Then why are we voting for it? Do we have to accept the committee's report?

**The Chair:** If you've got an objection to the validity of that, say so.

**Mr Klopp:** I object.

**The Chair:** Tell me why.

**Mr Klopp:** Well, I don't know. That's what I don't understand.

**The Chair:** You sound like Admiral Stockdale.

**Mr Klopp:** No, Mr Chair, just don't be so quick. You had a subcommittee meeting. If you bring it forth—I just happen to have overheard the subcommittee report, and it sure sounded like it was a very straightforward thing, and yet, I don't know if we can talk about it, but somebody in the room made known some concerns about the procedure.

Section 123 is something that is relatively new, I understand, to the business of the House. I think it's a good program, but at the same time I'm just not sure how one political party can have something that it said it wanted to do—and it's very important and we're all allowed one kick at the cat—and then all of a sudden, "Oh, well, we're

going to say it was last year or something for whatever reason, and I want to pull a new one."

I'm a little concerned that maybe my party can do the same thing down the road and for that reason, since I'm not in the subcommittee, but at this particular time I feel I do have an objection to just all of a sudden this is voted on by the committee of the whole. I ask you again, is it a foregone conclusion that even if I vote no it doesn't matter, we have to accept the subcommittee's report, period? That's all I ask.

**The Chair:** You can vote any way you want. You can abstain. You can leave the room temporarily, like so many government members do when unpopular legislation is being passed.

**Mr Klopp:** I don't do any of that, so let's call the vote.

**The Chair:** You're right, the government can do the same thing; you can have as many kicks at the can as you want as long as it's only one per year. He had a kick at the can in 1991, he's getting another kick at the can in 1992, and come 1993 he'll have an opportunity for yet another kick at the can. So will the Liberal caucus. It's interesting that these notices are so rare, when one would think that they would be so valuable to opposition parties as a means of investigating particular matters.

**Mr James J. Bradley (St Catharines):** This should be in the Amethyst Room. It's good entertainment.

**The Chair:** We do our best, Mr Bradley.

**Mr Bradley:** Doesn't the government want to be in the Amethyst Room where it's on TV?

**The Chair:** Now, as a courtesy, in view of the fact that there is a report from the subcommittee, I put that to the committee. Let me put it this way: Is there a consent to its adoption? Thank you. It's adopted.

We'll move on now to the business of the committee. Yes, Ms Murdock.

**Ms Sharon Murdock (Sudbury):** Just one, before we do that, Mr Chair. I received a letter signed by you today in my office, to the Speaker, in regard to two items: one on child care services for people who are called as witnesses and the second part being some of the difficulties in the interpretation services program.

I would just like to say that one other item I heard many people complain about during the hearings when we were sitting at night—because we had late-night sittings every day during the five weeks—was that when we were sitting at Queen's Park they did not have access except through one door. They would inevitably come to the front door and of course the doors would be locked and there wasn't even a sign there telling them which door to use. I think if there are committees sitting late at night, the Speaker should be advised and there should be some alternative mode of entry.

**Mr Steven Offer (Mississauga North):** For what?

**Ms Murdock:** When we have presenters coming here. We had presenters coming here—

**The Chair:** Quite right. That was a point made. The clerk has paid heed to that and the clerk will write a letter to the Speaker and the Clerk and whoever else is interested, advising him of those concerns raised, and carbon copies will be delivered to members of the committee. Thank you, Ms Murdock.

LABOUR RELATIONS AND EMPLOYMENT  
STATUTE LAW AMENDMENT ACT, 1992

LOI DE 1992 MODIFIANT DES LOIS  
EN CE QUI A TRAIT AUX RELATIONS  
DE TRAVAIL ET À L'EMPLOI

Consideration of Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment / Loi modifiant certaines lois en ce qui a trait à la négociation collective et à l'emploi.

**The Chair:** Now, still on Ms Witmer's amendment to the bill—

**Mr Offer:** Mr Chair, a point of order, if I may: Just prior to us commencing there were two outstanding general matters on which I would like to get clarification from the government.

**The Chair:** Yes, sir, by all means.

**Mr Offer:** The first is, the government had indicated that it still had further amendments to this bill, notwithstanding the late date. Notwithstanding the fact that we have less than three hours to talk about this bill, the government has not yet given us amendments.

Secondly, the government specifically indicated it was going to report back to the committee, I believe on the following day, which would have been yesterday, on what the government's position is with respect to the very valid arguments put forward by the Ontario Nurses' Association. The parliamentary assistant said a decision was going to be made and asked for a deferral of that section. We have now passed that section, but they indicated that the decision was going to be made within the day. We have now passed that day.

**Mr Klopp:** Didn't say the day.

**The Chair:** Okay, to the first matter: amendments. You got them. All you got to do is ask, Mr Offer. Ms Murdock, to the second matter.

**Mr Bradley:** It's too bad the Chairman has to provide these to you. It's not the government—

**The Chair:** Listen, I'm versatile. I'm pleased to help out, Mr Bradley.

**Ms Murdock:** The government provided them.

**The Chair:** I do windows too.

**Ms Murdock:** For those who are new to the committee, the government had tabled these as we had—they just hadn't been delivered. As today, we got the balance of the Liberal and the balance of the Progressive Conservative motions as well. So it will be—

**Mr Offer:** What balance?

**Ms Murdock:** I have—no? Okay, I'm sorry, I apologize. Not the Liberals', the balance of the Conservatives'.

In response to Mr Offer's second query, I never said we would have it the next day. I said there were conversations going on and I asked to defer till the end. I haven't heard—

**Mr Offer:** Today is the last day.

**The Chair:** Go ahead, Ms Murdock.

**Ms Murdock:** No, it isn't. I have not heard anything at this point from either ONA or the ministry on that subject, although I put in a query this morning to get that answer. Certainly, we have to have it by 3:30 on Monday, I would say, in order to have any discussion.

**The Chair:** Is that all, Ms Murdock?

**Ms Murdock:** Yes.

1600

**Mr Offer:** Mr Chair, I would just like to read from the government House leader's motion and I will require some direction on this.

It says, with respect to the clause-by-clause consideration of the bill, after indicating the eight sessional days:

"All proposed amendments shall be filed with the clerk of the committee by 4 pm on the day prior to the last day on which the committee is authorized to consider the bill clause by clause."

"On the last day." I submit this is the day prior to the last day on which the committee is authorized to consider the bill clause by clause.

**The Chair:** Can I interrupt you for a minute? Is there any argument about whether or not today is the day prior to the last day?

**Ms Murdock:** No.

**The Chair:** Good. Okay. Go ahead, Mr Offer.

**Ms Murdock:** Having said that, the Progressive Conservative Party's Mrs Witmer deferred her motion as well, in which nursing was included as an exemption under that section, so we don't have to provide the amendment. It's already on the record.

**Mr Offer:** I heard what you said, but it's just not going to wash, okay?

**Ms Murdock:** Why not?

**Mr Offer:** The fact of the matter is, if you think that you're going to try to cosmetically get around that, then let's call that section right now and hear your position.

**Ms Murdock:** You would have to have unanimous consent to call it, would you not? And I'm not prepared to discuss it today.

**The Chair:** I've got to tell you, I didn't understand your response to Mr Offer.

**Mr Offer:** I didn't understand what she said.

**The Chair:** Did you, Mr Hope?

**Ms Murdock:** I was responding to Mr Offer's comments, and my understanding of what Mr Offer said was that we would have to provide amendments on the day prior to the last day, which is today. There's no dispute. I'm agreeing with you on that. However, having said that,



any amendment that the ONA has requested is covered by the Progressive Conservative amendment, which is also deferred, and therefore the government does not have to provide an amendment today.

Interjections.

**The Chair:** One moment, please. What you're saying is that if the government acquiesces on this particular issue, it would be supporting or utilizing the PC amendment which has been filed as the vehicle to achieve that goal?

**Ms Murdock:** That's correct.

**The Chair:** Fine. Now, Mr Offer.

**Mr Offer:** I just wanted to find out exactly what it is that the government was prepared to do.

**Mr Randy R. Hope (Chatham-Kent):** Just when you began this whole process today—I want to refer back to some of your comments made through the hearings that only one person should speak at a time for the people who are trying to record this. I notice that you also got long out of range so the people of Hansard were having a difficult time. As it's the last day, I just want to remind you of that process that you referred to the rest of us.

**The Chair:** Mr Hope, I've never had any complaints from Hansard.

**Mr Hope:** Point well taken.

**The Chair:** Okay. Further debate on Ms Witmer's motion? All in favour, please indicate. Opposed? Motion is defeated.

Mr Offer moves that subsection 8(7) of the act, as set out in section 8 of the bill, be struck out.

**Mr Offer:** My motion speaks to the whole issue of petitions. Subsection 8(7) of the bill reads:

"The Board may consider evidence of a matter described in clause (5)(a), (b) or (c)" with respect to "deciding whether to make a direction under subsection (3)" of the bill "and only if the evidence is filed or presented on or before the certification application date."

The reason I make this amendment, and I must say I was hoping that I might not have to move it. I would have hoped to almost have been able to withdraw the amendment—though I'm not making that motion, thank you—if my earlier amendments with respect to the process of organization would have been carried. Unfortunately, the earlier points made under section 8 were not, and I am still extremely concerned with the barriers that we are putting up around workers and their decisions in this province. I am extremely concerned that we are eroding the rights of workers, in the first instance, to freely make up their minds, and secondly, to change their minds if they wish to do so.

I feel that when you don't have, and have refused, as the government has, a system which gives full, wide-ranging latitude to workers, you must certainly allow them to change their minds by way of petitions. So this motion is directed to hopefully accomplish that. I believe it will.

I am quite concerned that the government is going to steadfastly move in the direction since day one, which takes away the rights of workers in this province. This amendment, if they vote against it, would once more show that the government is consistent in terms of taking away

rights of workers. That is a consistency which I believe the members of this government should be profoundly embarrassed about.

**Mr David Turnbull (York Mills):** To the extent that this is similar to the discussion of the previous PC motion, I'm in agreement.

**The Chair:** Thank you, sir. There being no further discussion, all those in favour of Mr Offer's motion, please indicate. Those opposed? Motion defeated.

Ms Murdock moves that subsections 8(4) to (7) of the act, as set out in section 8 of the bill, be struck out and the following substituted:

"Evidence

"(4) The board shall not consider the following evidence if it is filed or presented after the certification application date:

"1. Evidence that an employee is a member of a trade union, has applied to become a member or has otherwise expressed a desire to be represented by a trade union.

"2. Evidence that an employee who had become or had applied to become a member of a trade union has cancelled, revoked or resigned his or her membership or application for membership or has otherwise expressed a desire not to be represented by a trade union.

"3. Evidence that an employee who had become or had applied to become a member of a trade union has done anything described in paragraph 2 but has subsequently changed his or her mind by becoming a member again, by reapplying for membership or by otherwise expressing a desire to be represented by a trade union.

"Evidence to be in writing, etc.

"(5) The board shall not consider evidence of a matter described in paragraph 1, 2 or 3 of subsection (4) that is filed on or before the certification application date unless it is in writing and signed by each employee concerned.

"Same

"(6) The board may consider evidence of a matter described in paragraph 2 or 3 of subsection (4) but only for the purpose of deciding whether to make a direction under subsection (3) and only if the evidence is filed or presented on or before the certification application date and is in writing and signed by each employee concerned.

"Same

"(7) Subsections (4) and (5) do not prevent the board from,

"(a) considering whether, on or before the certification application date, section 65, 67 or 71 has been contravened or there has been fraud or misrepresentation;

"(b) requiring that evidence of a matter described in paragraph 2 or 3 of subsection (4) that is filed or presented on or before the certification application date and is in writing and signed by each employee concerned be proven to be a voluntary expression of the wishes of the employee, or

"(c) considering, in relation to evidence of a matter described in paragraph 1, 2 or 3 of subsection (4) that is filed or presented on or before the certification application date and is in writing and signed by each employee concerned, further evidence identifying or substantiating that evidence."

**Ms Murdock:** I won't speak as quickly, Hansard, so you won't have any difficulty.

Bill 40 represents the revised version of the certification provisions of the act. The main purpose of the provisions is to eliminate the admissibility of post-application petitions. We have never said anything different and we are maintaining that position. Since petitions are a form of evidence, it was necessary to rewrite this part of the act to clarify the admissibility or inadmissibility of all types of evidence relevant to counting the number of employees and the number of union supporters in a case of certification application.

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The Bill 40 provisions revise the act's current provisions and also codify board rules and jurisprudence regarding evidence in a certification application. This motion adds concepts that were inadvertently omitted from Bill 40. Evidence in support of or in opposition to the applicant trade union must be in writing and signed by the individual employee concerned. However, post-application-date evidence, not necessarily in writing, is admissible if it's for the purpose of identifying or substantiating proper pre-application evidence. These rules in regard to what I've just said are currently covered in the board's rules of procedure. The motion also revises the Bill 40 provisions for greater clarity.

In summary, the effect is the following: revises subsection 8(4), prohibiting post-application-date evidence of membership support for the union, of revocation or petition against the union and of further change of mind or what we used to call counterpetitions—in the Bill 40 version, these were covered in subsections (4) and (5)—the revised subsection 8(5) contains the added requirement that the admissible pre-application evidence be in writing and signed by the employee; the revised subsection 8(6) restates what was in subsection 8(7) of the Bill 40 version, that the rule against post-application evidence does not apply where the board is considering fraud, misrepresentation, unfair labour practices or involuntariness in respect of the pre-application evidence in support of or in opposition to the applicant union, and it adds the further exception that the board may consider post-application evidence that "identifies or substantiates" pre-application evidence.

Those are the reasons as to why we're doing this.

**Mr Offer:** Let's discuss what has just happened here. It's beyond belief what has just happened.

I stated yesterday something which I firmly believe. That is, that when one thinks of the Ontario Labour Relations Act—I'm not just talking to Bill 40 but to the Ontario Labour Relations Act—many will feel that the heart and soul of the act is around the rules of organizing and certification. I'm not saying there aren't other very important aspects, but ask anybody on the street, "What does the Ontario Labour Relations Act stand for?" and they will say, I would suggest, "That's the rules how people become organized." I don't have to know very much more than that. They will think that's a central theme, an important part of the act. I state that as my opinion and something which I believe in.

What do we have? In Bill 40 the certification is found in section 8. Section 8 contains seven subsections. What has the parliamentary assistant done? She has now said that four of those seven subsections, subsections (4), (5), (6) and (7), are repealed and this other stuff is brought in. You have taken out in five minutes and reinserted in a further five minutes what many people will feel is a central focus of the Labour Relations Act.

I'm going to ask some questions. I'm going to ask what prompted the change in subsection (4) to what it is, as you have indicated, from what it was. I think we have to have this on the record, because this is exactly the problem we're going to have. It's exactly the problem when we operate under a closure motion. You will be voting for certain issues, items and sections that you've never heard about before. In fact, you will be voting on things that will not even be read in. I believe that's a fair reading of the motion. Come 4 o'clock Monday, all those motions on the table are taken as being read in, and we vote. It's a totally irresponsible action by legislators in this province.

The Chair is dictated to by the rules. In my opinion, Mr Chair, you must follow the rules and dictates as prescribed by that motion which we operate under, by dealing with these things, motions you haven't even read, and I don't say that in any critical sense whatsoever. There are I don't know how many motions—I would dare say over 100—that will not even be read into the record. You will just hear a number. From all caucuses, you will hear a number, an amendment to section so-and-so by the Liberal member or by the Conservative member or by the government member. You will not hear any discussion about what it means. Any discussion is not allowed, and you will be asked to say yes or no.

If you find that is in any way a responsible action, I think that's just totally out of whack with what people would expect and I think it's totally in sync with what people do feel happens here. That's the reason for the cynicism. That's the reason for the lack of confidence. They think you're going to move along a path and you're going to have your members say yea or nay and I will say yea or nay and the Conservatives will say yea or nay on any issue, and we won't even have had one second of discussion on a matter that is going to affect workers in this province.

**Mr Turnbull:** Obviously, we're most concerned that this is not only eliminating post-application petitions on sober second thought, but it just goes to the heart of democracy. Somebody may have signed his name erroneously or without a great deal of thought. Surely, you're going to allow them second thoughts on the matter. It just makes good sense.

The other point I wanted to make is that while I agree with what Mr Offer is saying, that we're not getting enough time to really air all these concerns because of the accelerated timetable the government has forced upon us with time allocation, I wish we could get on with all of the sections so that, at least in the short amount of time that's left to us, we could review everything. I note that the Liberals only have four or five more amendments to put.

**Mr Offer:** That's not absolutely certain.



**Mr Turnbull:** Mr Offer, with great respect, you went on at some length about the fact that we couldn't introduce amendments after today.

**Mr Offer:** No, I didn't.

**Mr Turnbull:** Okay.

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**Mr Offer:** Mr Turnbull just indicated something and that's not the position I took. In fact my question was to the Chair, because I was not making that up; I was reading from a motion passed by the government House leader and I wanted to get an understanding as to what that meant. I wasn't taking a position one way or the other. I didn't make up those rules. Those rules, that dictate, was already passed.

**Mr Turnbull:** You have no argument from me on that, Mr Offer, the point being that at this moment we are aware of four or five more amendments by the Liberals, which take you to section 13. According to a Liberal press release in September, you were going to have all kinds of amendments. We haven't seen them so far. The Conservatives still have another 72 amendments, which we would like to get into the record and discuss a little bit, rather than obstruction of this committee.

I agree with you we should have more time. It's quite clear we should have more time. But let's at least get on with the time we have got in reviewing the amendments we've got before us.

**The Chair:** Further discussion, Mr Offer?

**Mr Offer:** Yes. I don't think it serves the committee well at all to speak about the lack of time to deal with this from one opposition party to another when the fact of the matter is that the government is the one that brought in the motion. I'm now just looking at another 25 amendments proposed by the government dealing with the issue of replacement workers. I accept that not all, but I recognize that the government has just laid down 25 amendments, many—I would not say all, because I haven't had time to read them—to deal with replacement worker provisions.

I'm saying, let's be frank here. The question we have is that, we know we're not going to be dealing with all the bill. That we knew from day one. We're not even going to be dealing with a tenth of the bill. The point I'm making is that I feel it's totally irresponsible that we are going to be asked to vote in favour or opposed, or just let's say to vote, on a section or an amendment to a section the likes of which we will never read in the committee. It will never even be part of the committee. It will be a number. That's totally irresponsible.

I want to go on with this section. I said even yesterday, when we were dealing with the certification, that we moved about as quickly as one could ever hope to move and we couldn't finish one section. Why? Because it was an important section. We have many more to go.

What I would like to ask is, how come the government seeks to take away the rights of workers to change their minds?

**Ms Murdock:** We have not taken that right away. Admittedly, the time period is probably different, given the

different cases, but the workers obviously have the right to change their minds under this provision up to the date of the applicant union applying to the board, and upon that date can—

**Mr Offer:** How come then—

**Ms Murdock:** Just a minute. In response to the latter portion, of the 25 amendments that are here, none of them are different than what was in the press release we issued before this came, but secondly, 8 out of 25 of them relate to replacement workers or specified replacement workers and that is far from the intimation that all 25, or a lot of them, are relating to that. Again, like yesterday, a couple are on the French corrections and are not substantive in terms of the technical aspects of it. So I don't think we're not providing you with enough opportunity.

I believe also that in terms of the section that's before us, you asked originally why this was being changed from the subsection (4) in Bill 40 to what is there today. Mr Kovacs will respond to you.

**Mr Jerry Kovacs:** You suggested, Mr Offer, that the motion the committee's now considering represents a repeal of the existing provisions of Bill 40 and the substitution of new provisions. I'd like to reiterate the several points Ms Murdock made in her explanation of the bill after tabling it. In fact, the motion represents a revision of the existing Bill 40 provisions after, and you asked—I'm sorry, I missed that.

Interjection.

**Mr Offer:** It's not a repeal, it's a revision.

**Mr Kovacs:** That's correct. They are substantively the same provisions that were in Bill 40. You asked also what caused the government to change these. I would tell you that it was after the Ministry of Labour had the very helpful and very generous comments of the labour bar, from not just this city but from other cities around this province, that told us that the way these subsections were presented in Bill 40 wasn't the clearest possible presentation of these issues.

I would finally add that Ms Murdock also indicated there was a substantive addition represented in this motion. That substantive addition was to deal with the necessity that certain evidence be in writing and signed, and that further evidence that isn't in writing and isn't signed might be submitted for the purpose of identifying or substantiating other types of evidence. Ms Murdock also made it very clear that those substantive additions to the certification provisions are added because they exist in the current board rules of procedure that are published by regulation.

**Mr Offer:** Just a question: I didn't catch it, but did you say the "labour bar"?

**Mr Kovacs:** Yes. Those would be lawyers practising labour relations law in the province of Ontario, representing employers and unions and individual employees.

**Mr Offer:** I'd like to get a clarification whether those representatives came before this committee in our public consultation.

**Mr Kovacs:** Some may have, on behalf of particular presenters to this committee, but many others very generously offered their comments.

**Mr Offer:** Behind the scenes.

**Mr Kovacs:** No, not behind the scenes; in meetings with the Ministry of Labour.

**Mr Offer:** All I am saying is that we sat for five weeks and I didn't hear these arguments made. I didn't hear these arguments made during the public hearings consultation. You're dropping these down with hours to go. I am not—

**Mr Kovacs:** I would tell you, Mr Offer, that I did make clear and other representatives of the ministry did make it clear to each and every one of the lawyers who offered their comments on the technical wording and the configuration of the bill that they were also welcome to make presentations to the standing committee during the hearings phase or at any point that the committee would accept their presentations. They were all fully aware of that right. If they chose to appear before the committee, then you have heard from them.

**Mr Offer:** It just seems to me that these changes are being made in response to a labour bar or a certain group of lawyers who discussed issues with ministry officials outside of the public hearings consultation. At a time when we were dealing with areas of the bill and aspects of the bill, they were dealing with some other areas and some other aspects. The areas they were dealing with are now in the bill; the areas the general public was dealing with are not in the bill.

**Ms Murdock:** I personally spoke to the whole issue of the writing issue in terms of changing their minds. I specifically asked that question during the hearings of different groups in Kingston. I know that as we did the Ottawa-Kingston tour, I was picking up that there was some misunderstanding, so I specifically asked the question. It is on the record there, Mr Offer; it isn't outside.

But having said that, from the day the Burkett report was made public, or the one side of the Burkett report was made public, this has been in the media, on the news. The opposition have utilized it within the House and as a consequence we have had unbelievable numbers come to the ministry to speak to the deputy, the minister and the policy people at the ministry. This has been ongoing on a daily basis since May 1991.

Then not only do we have the physical presentations that were made before the committee, but we also have hundreds and thousands of letters by this stage and other presentations made by groups that were unable to make it on to the committee, and provided it to the ministry and we would advise them to provide it to the clerk of this committee, so that it would get on to the record of this group. All of those are there for public scrutiny.

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**The Acting Chair (Mr Randy R. Hope):** Mr Turnbull, do you have any comments or questions?

**Mr Turnbull:** Obviously, we're concerned at that kind of process. We know there were a great number of people who were not allowed any hearing time. Given the fact that this is probably the most significant bill this government will bring in this Parliament, it's unreasonable

that you locked out so many people who had very valid points of view, to the extent that you're going and listening to them in camera, so to speak. I can't describe it in any other way. You're having private meetings in the ministry and yet this committee is charged with reviewing all the evidence. You cannot have it both ways.

You're cutting off debate of this matter and it seems reasonable that the opposition parties should have access to these people to question, and we should also have the press having access to these people during the process of it. It really isn't good enough and you come and suggest that this is a fair way of operating. Why bother having standing committees if that's your approach to writing legislation?

**The Acting Chair:** Any further comments?

**Mr Offer:** I share those concerns. I feel the committee in some way—I apologize for the word beforehand. I think we were deceived. I apologized beforehand for using those words. I'll tell you why. You shake your head. We brought motions here to extend the hearings for a couple of weeks. I asked for two weeks. You voted against it. At the same time as you were voting against that, I now know that ministry officials, from what you have said here, were having meetings with other people dealing with aspects of the bill. Those people should have been at the public consultation hearing.

**Mr Kovacs:** If I may clarify, Mr Offer, those people were all informed that public consultations were available. These were people who called the ministry, and as Ms Murdock has said, there have been dozens or hundreds of people calling the ministry on a regular basis since May 1991 who have offered their comments.

**Mr Offer:** Why didn't you have them here?

**Mr Kovacs:** If they've chosen not to appear before the committee, that's their prerogative, surely.

**The Acting Chair:** Mr Offer, do you have any more comments, or Mr Turnbull?

**Mr Turnbull:** Yes. There are an awful lot of people who would have liked the benefit of being able to speak to the ministry but were refused any access to it. We have a government that only wants to listen to one side of the picture and it isn't good enough. You are apologists for the union leaders. You're trying to ram this down people's throats.

**The Acting Chair:** We are speaking to section 8.

**Mr Turnbull:** The workers are fed up with what you're doing.

**The Acting Chair:** We are speaking to section 8.

**Mr Turnbull:** Yes, we are. We're speaking to the whole of the bill, as a matter of fact.

**The Acting Chair:** We're speaking on section 8 right now. We're on section 8.

**Ms Murdock:** Just in response to Mr Turnbull and Mr Offer, but specifically Mr Turnbull's comments in regard to the numbers, obviously we were five weeks; that's true. I believe there were 240 time slots that were fitted into that five weeks. We had something like 1,100 applicants and that's never been disputed. It's been discussed time and



time again and commented upon time and again during the five weeks of hearings.

Yes, we tried and I know that the subcommittee and the committee agreed that the Chair and the clerk would make a determination as to who would be fitted into the time slots. Each caucus was asked to submit its priority list, which we did. Then we hoped that our priority list would make it on to the presentations in each of the cities.

**The Acting Chair:** This is speaking to section 8?

**Ms Murdock:** Yes, it is speaking to section 8, because the point has been made that this section 8 that we are proposing had nothing to do with any of the presentations that were made before the committee, so I think it is relevant.

In any case, having said that, when you were sitting down and looking at this list, many of those—it's unfortunate that the person I'm responding to is not here to hear. I'll use the unions since everyone from the opposition side claims that they control what's happening here. Once you've heard from Leo Gerard and once you have heard from Harry Hynd and four or five of the locals from different Steelworkers' organizations around the province, I don't think we need to hear from the 100 locals that were in that list. There is no necessity. The same thing I believe applies to any of the other groups, and I would say my own city of Sudbury, where we listened alternately to either a labour council or a chamber, a labour council or a chamber.

**The Acting Chair:** But this is speaking to section 8?

**Ms Murdock:** It is. When you look at who was on that list of 1,100, I don't think we needed to hear from all of them when their points of view were going to be expressed very, very capably by other groups. So this is not something new. As I said, I spoke to this issue in Kingston myself on the record.

**Mr Offer:** I'm absolutely certain that the parliamentary assistant and the staff of the Ministry of Labour and the members of the government do not understand my deep concern with not only this amendment but the way in which it was brought about. I'm not going to speak any more on it. You don't understand that either committees work or committees are plays. I thought we were trying to make this work. I now find out that there is a totally different thing going on.

I'm just going to ask the question, then. Why in this section that the parliamentary assistant has moved did they feel it was necessary to take away the right of workers to change their minds after an application for certification had been filed?

**The Acting Chair:** Ms Murdock, do you have a response?

**Ms Murdock:** I responded to it yesterday.

**The Acting Chair:** Okay. Mr Turnbull, do you have a—

**Mr Offer:** No, I don't believe that the parliamentary assistant—if she doesn't want to answer the question, that's fine.

**The Acting Chair:** Ms Murdock, would you like to respond?

**Ms Murdock:** Certainly. I actually stated already today that we do not see it in the same light, as a removal of rights. First of all, they still have the right to change their minds up until the date of application, that's true. After the date of application, as I stated yesterday, causes delays and costs because the reality is that petitions, as they are called, or revocations or however you want to word that, end up being not so much revocations as the board then taking time to determine whether or not it's valid. That has resulted in tremendous costs to the Ontario Labour Relations Board, to the employers and to the trade unions of this province in terms of a delay factor, and we are removing it from this act.

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**The Acting Chair:** Mr Turnbull, do you have any comments on section 8 you wish to make?

**Mr Turnbull:** Subsection 5 makes it more difficult for an individual to revoke his or her membership, even prior to the certification application. Not only are they eliminating post-application petitions, the sober second thoughts, but they're making it more difficult to revoke pre-application by adding the requirement that the decision to revoke be in writing and signed by each employee.

The government should amend the bill to include a mandatory secret ballot vote in all cases, instead of further restricting an individual's ability to change his or her mind. To the extent that we've heard the government's side, and it is totally unbending to what we're suggesting, I would propose that we now put the question.

**The Acting Chair:** The question is being put.

**Mr Offer:** I want a recorded vote.

**The Acting Chair:** First of all, I'm going to call for a consensus on the question. All those in favour of putting the question? All those in favour of putting the question, raise your hands. Those opposed? Okay.

**Mr Brad Ward (Brantford):** I'd like to thank the committee for giving me an opportunity to express my opinion on this important—

**Mr Turnbull:** Excuse me, Mr Chair.

**Mr Offer:** Are we having the vote?

**The Acting Chair:** He asked for the question to be put. You have to have consensus for the question to be put, and the motion was defeated.

**Mr Turnbull:** Is that right?

**Ms Murdock:** I always thought there was no debate.

**Mr Turnbull:** There's no debate on that.

**The Acting Chair:** No. There wasn't a debate. There was a vote and the vote was defeated.

**Ms Murdock:** Oh, okay. I see.

**The Acting Chair:** I allow Mr Ward now to express his comments.

**Mr Offer:** He wishes to speak to this section. Would you allow him?

**Mr Ward:** Just a couple of minutes.

**Mr Pat Hayes (Essex-Kent):** He's trying to muzzle the government.

**Mr Turnbull:** I'll do more than muzzle the government.

**The Acting Chair:** Mr Ward, you now have the floor.

**Mr Ward:** I'd like to point out to this committee that there are restrictions on petitions in every other jurisdiction in Canada, both federally and provincially. During the hearings held in the summer, some 240 individuals gave presentations to this committee in the month of August. We heard time and time again of abuse of petitions by employers in an effort to circumvent the wishes of employees who collectively in a workplace made the decision to have a trade union represent them.

In fact, we heard evidence of one employer who listed the Toronto Maple Leafs roster as employees of a certain workplace. Each individual had to be confirmed or they decided that wasn't an employee and held up the process. I think it was the taxi drivers in Toronto. Examples like that, I think, give credence to the necessity of this amendment to this motion. The fact is that in Ontario workplaces have changed, and the fact is that we should remove unnecessary obstacles that are in the way of employees who wish to have a trade union represent them. This is one obstacle that was open to abuse by employers, and we heard it time and time again.

I think it's an appropriate motion to adopt, and I would suggest, as Mr Offer has, that a recorded vote take place on this important issue, so that the working people of Ontario know who stands for removing some unnecessary obstacles that were open to abuse and who doesn't.

**The Acting Chair:** Any further comments? Seeing none, all those in favour of the proposed amendment?

**Mr Offer:** I ask for a recorded vote.

**The Acting Chair:** A recorded vote. Keep your hand raised until the clerk has read your name out. All those in favour of the motion, please signify.

**Mr Offer:** Which motion?

**The Acting Chair:** Ms Murdock's motion.

**Ayes**

Hayes, Klopp, Ward (Brantford), Wood.

**The Acting Chair:** All those opposed?

**Nays**

Offer, Turnbull.

**The Acting Chair:** The motion is carried.

Mr Turnbull, your motion's next.

**Mr Turnbull:** I move that subsections 8(4) to (7) of the act, as set out in section 8 of the bill, be struck out.

**The Acting Chair:** Could you repeat the motion you are putting forward? It should be section 8 of the bill, subsections (8) and (9).

**Mr Turnbull:** Section 8 of the bill, subsections 8(4) to (7) of the act.

**The Acting Chair:** That has already been dealt with.

**Mr Turnbull:** I'm sorry, I think my binder is out of sequence.

**The Acting Chair:** Yes, we dealt with that one already.

**Mr Turnbull:** This is 8(8) to (9)?

**The Acting Chair:** Yes, 8(8) and (9).

**Mr Turnbull:** Okay, I'm sorry.

**The Acting Chair:** Do you want to read the whole thing into the record?

**Mr Turnbull:** I move that section 8 of the act, as set out in section 8 of the bill, be amended by adding the following subsections:

"Time for vote

"(8) A representation vote must be held within ten days after the certification application date.

"Secret ballot

"(9) A representation vote must be by secret ballot."

**The Acting Chair:** Would you wish to speak on that, Mr Turnbull?

**Mr Turnbull:** Yes. This amendment requires that the secret ballot vote be conducted within 10 days of the application for certification. We believe that the whole certification process would become much more open, aboveboard and understandable for both employers and employees if the legislation were to require a secret ballot vote on all applications for certification within a short period of time.

In British Columbia and Alberta, such mandatory representation votes within 10 days of the date of application have worked well. All the employees can exercise their right to choose freely and the employer is still enjoined from interfering with that right.

Ontario Federation of Labour President Gord Wilson rejects the requirement of a secret ballot vote, arguing that it would be a delaying tactic used by business. Yet in British Columbia and Alberta, such mandatory votes within 10 days of an application for certification have worked.

Why is a mandatory representation vote acceptable to NDP Premier Michael Harcourt for British Columbia while it is not acceptable to NDP Premier Bob Rae for Ontario?

**The Acting Chair:** Any further comment on the motion?

**Mr Offer:** Yes, I have a few comments. First, I note that the amendment put forward is very similar to an amendment which was put forward by myself yesterday. I think the difference is that I wanted a representation vote within 30 days; this amendment calls for 10 days. I wanted a secret ballot vote and so does this.

I have a feeling, Mr Turnbull, that this amendment is not going to be accepted by the government, and that is because my amendment wasn't accepted yesterday. The arguments put forward as to why these types of amendments should not be accepted are, I believe, flawed. I believe that I have not heard one reason why the government would be so worried about giving workers in this province the right to cast their votes whether they wish or do not wish to be unionized in a secret manner, free from fear, intimidation and coercion.

Mr Ward earlier spoke about, let's make certain the workers of this province know exactly where everybody stands in this matter. I could not agree with him more. I think it's absolutely essential that the workers of this province—I believe 33% of whom are unionized and the remainder, the 67%, not—that every single one of those



workers in the province, unionized and not, find and recognize that the members of the government voted against informing workers of their rights, voted against giving workers a free, secret ballot vote; voted against a lower threshold to trigger the vote—let me repeat—voted against lowering the threshold to trigger the vote; voted against increased protection of workers when an organizing drive is taking place, protection to the men and women from intimidation and coercion from whatever source, be it organizer or employer; and continue to vote against allowing workers to express their desires.

I couldn't agree with Mr Ward more than to let the workers of this province know that's where the government members voted against. I'll call the vote.

1650

**The Acting Chair:** The question has been put. Is that what you're putting? All those in favour of putting the question, if there's no further debate? Opposed? Carried.

All those in favour of Mr Turnbull's motion, please signify by raising your right hand. All those opposed? It's defeated.

Mr Turnbull, you have another motion?

**Mr Turnbull:** Yes, section 9 of the bill.

I move that section 9 of the bill be struck out and the following substituted:

"9. Section 9 of the act is repealed."

**The Acting Chair:** Do you wish to speak on that, Mr Turnbull?

**Mr Turnbull:** Yes. The amendment removes section 9 of the act. Pre-hearing representation votes are not required if a representation vote by secret ballot is mandatory for certification.

**The Acting Chair:** Any further comment on it?

**Ms Murdock:** I'll speak to it, if I may.

**The Acting Chair:** Ms Murdock, go ahead.

**Ms Murdock:** Section 9 currently provides for pre-hearing representation votes where a membership support level of 35% has been reached. Such votes are generally held where prolonged litigation is expected. Ballots are sealed in a box and they're not counted until that litigation is completed. That's what section 9 does.

As amended in Bill 40, section 9 would also contain the automatic certification provision. It would also provide for the certification where there has been an unfair labour practice which has made it unlikely that membership support would be able to be ascertained, without a requirement that there be an "adequate" membership support, which is the language in the act.

We've made our views known, through here, on automatic certification. Of course, it's in the existing legislation, so we're not changing that aspect of the act.

There's currently a twofold test for unfair labour practices for certification. First, it would only apply where an employer has committed a very serious unfair labour practice, such that the board believes it's not possible to test true membership support, and then it orders an automatic certification. So if that situation were to occur and the board believed that whatever had been done so tainted the

ability to determine whether or not true membership support could be ascertained, they would just automatically certify the union.

And the government is removing the adequate membership support test, because this has the effect of rewarding those employers who do commit grievous offences early in a campaign—and not that we make the determination, but that the board makes the determination of whether or not that has been done. So we're removing that. By Mr Turnbull's motion, that whole aspect of that part of the bill would be completely removed, and we're not prepared to agree to that.

**The Acting Chair:** Mr Offer, I'm sure you have some comments.

**Mr Offer:** I must tell you, I'm sort of off kilter today, I must say, for the first time in these—in my opinion, for the first time. I must say I just feel a little off balance today, and I must say I just can't get out of my mind that there were shadow meetings and hearings taking place while we were discussing this bill with the public, albeit in a very minor way. I can't forget the words of the parliamentary assistant, who said, "You know, you heard from some of the big union leaders and some of the major employer groups, so you really don't have to hear from everybody else."

**Ms Murdock:** You don't.

**Mr Offer:** And she repeats it just now.

I can't help but feel, honestly, that I was duped into taking part in these proceedings. I was there listening to people, preparing amendments, trying to bring forward concerns, learning about issues and about what it's like, and at the same time, there were some meetings taking place somewhere else which resulted in wholesale amendments which were never part of the public consultation process.

**The Acting Chair:** Which are you referring to, section 9?

**Ms Murdock:** No, he's referring to section 8.

**Mr Offer:** I'm referring to the whole process.

**Ms Murdock:** No, it's only on section 8 that this issue has even arisen, Mr Offer.

**Mr Offer:** The parliamentary assistant gets upset.

**Ms Murdock:** No.

**Mr Offer:** My point that I am making is relevant, I suggest, to every single section of this bill.

**The Acting Chair:** If they are important things, then it's relevant to the section of the bill, yes. Mr Turnbull, you have further comments you wish to make?

**Mr Turnbull:** Yes. All of the members of this committee must be aware that I probably hold the most disdain for this bill of anybody in this room, but I really wish that we could get on with this. I agree with Mr Offer, it's ludicrous that they're having private discussions, but please, let's discuss that in the House, in debate, and let's get on with the amendments.

**The Acting Chair:** Any further discussion?

**Mr Turnbull:** I ask that the vote be put.

**The Acting Chair:** Seeing no further discussion, all those in favour of Mr Turnbull's motion please signify by raising your right hand.

**Mr Turnbull:** You don't have to do that.

**The Acting Chair:** No, I just didn't hear you.

**Mr Offer:** Stop delaying things, Mr Turnbull.

**The Acting Chair:** All those in favour of Mr Turnbull's amendment to section 9 of the bill please signify by raising your hand. All those opposed? Defeated.

**Ms Murdock:** I wish I had asked for a recorded vote.

**The Acting Chair:** Mr Turnbull, you have another motion to subsection 9?

**Mr Turnbull:** I apologize, but my binder must be out of sequence because I have a Liberal motion next in my binder.

**The Acting Chair:** Use it anyway.

**Mr Turnbull:** I beg your pardon?

**Ms Murdock:** Yours on section 9 is at the end.

**Mr Turnbull:** I'm sorry. My binder has—  
Interjection.

**Mr Turnbull:** Okay. Subsection 9(1) of the bill, subsection 9(2) of the act.

I move that section 9 of the bill be amended by adding the following subsection:

(1) Subsection 9(2) of the act is amended by striking out "may" in the ninth line and substituting "shall."

**The Acting Chair:** Would you wish to comment on that, Mr Turnbull?

**Mr Turnbull:** Yes. The amendment makes a representation vote mandatory in subsection 9(2) of the act. If the government does not support the removal of section 9 from the act, this amendment will make a representation vote mandatory.

**The Acting Chair:** Any further discussion? Seeing none, all those in favour of Mr Turnbull's motion please signify by raising your hand. All those opposed? It's defeated.

**Mr Offer:** you have a motion.

**Mr Offer:** This is section 10 of the bill? I was hoping very much to get to this section.

I move that section 9.1 of the act, as set out in section 10 of the bill, be struck out.

**The Acting Chair:** Do you wish to speak on it?

1700

**Mr Offer:** I do. I think that just before I make some opening comments to this, we have to realize that what follows after striking out this section of the bill will be a new section, which I would like to insert in its place. Section 9.1 of the bill really is, to me, an important aspect that demands discussion. Basically, to me it's that part of the section 10 of the bill that really many individuals were talking about.

The problem that I want to discuss is, the government has already refused to move on the secret ballot. They've refused to move on inserting rights of workers. It is this part of the bill that, in essence, grants automatic certification if 55% of the workers sign union cards. I would like

that deleted, and I will tell you why I would like that deleted: because of what I heard in our consultation.

I'm not talking about the shadow consultation being undertaken by the Ministry of Labour and probably the minister and parliamentary assistant. I'm talking about what we heard in the public consultation, that there is coercion that does take place, not in all instances, but in some instances, that the coercion and the fear and the intimidation that does take place in some instances is not a monopoly by one over another. Rather, there are examples that were brought forward to our committee of intimidation by employers over the fear of losing a job, intimidation by organizing unions, indicating that, "If you sign this membership card, you will get a vote," and people did that. Of course, under the law, that's not necessarily true. The members of the government say they didn't hear it, but of course, it was indicated that individuals came before our committee and said, "People say, 'Sign this card and you will get a vote.'" Now, that is what was said.

So what are we left with? We're left with that fact, that reality, and the situation is no protections in place for the workers of the province. It would seem to me that if we, in a strange way, get rid of the 55% automatic certification, if we reinstate, as I hope we will, the right of workers to have a secret vote, in fact the incidence of these types of examples that were brought forward, which should not take place—I am opposed to those things happening. I don't care who is the author of them, they are wrong, but they're a fact.

What we should be doing is looking at ways in which we can minimize those things from happening, minimize those incidents of intimidation, misinformation, coercion and fear. We can do it. We can do it through the institution of penalty provisions. We're going to be getting to that. It would seem to me that one way in which we can really do it is if we lower thresholds, not raise thresholds. Even 55%, people view as: "If I get 55%, that's automatic certification. That's a good thing." But think about the worker. Think about the organizer. Think about the employer: Instead of having to sign up 30%, as in my amendment, they now have to sign up 55%. I believe that is, in effect, a cause of difficulties and something we can deal with.

We can reduce, we can minimize, we can mitigate these examples of interference—I think the parliamentary assistant used that word yesterday and it's a good word—if we reduce the threshold, if we reduce the percentage, if we reduce the numbers that are the reason for these examples of interference.

We have an opportunity here to deal with the concerns that were brought forward to this committee. We have an opportunity to say, yes, we heard and, yes, we listened. I would ask the members of this committee to vote in favour of that part of my amendment dealing with section 9.1, which in no small measure lays the groundwork for these examples of interference to in fact occur.

**The Acting Chair:** Mr Ward, did you have comments you wanted to make?

**Mr Ward:** No, Mr Chair.

**The Acting Chair:** Mr Turnbull?



**Mr Turnbull:** No.

**The Acting Chair:** Seeing no further comments, all those in favour of—

**Mr Offer:** Recorded.

**The Acting Chair:** A recorded vote, okay.

All those in favour of Mr Offer's amendment, please raise your hand and hold it for the clerk until he's read your name off.

**Ayes**

Offer, Turnbull.

**The Acting Chair:** All those opposed?

**Nays**

Hayes, Klopp, Murdock (Sudbury), Ward (Brantford).

**The Acting Chair:** The motion has been defeated.

Mr Turnbull, you have an amendment you wish to put forward.

**Mr Turnbull:** This is on section 10 of the bill, section 9.1 of the act.

I move that section 9.1 of the act, as set out in section 10 of the bill, be struck out and the following substituted:

"Certification of trade union

"9.1 The board shall certify the trade union as the bargaining agent of the employees in the bargaining unit if more than 50 per cent of the ballots cast in a representation vote are cast in favour of the trade union."

**The Acting Chair:** Do you wish to comment on that, Mr Turnbull?

**Mr Turnbull:** Yes. The amendment removes the words "if a representation vote is taken" from section 9.1 of the act. Section 9.1 of the act is reworded to reflect the fact that a representation vote will be mandatory in all cases.

**The Acting Chair:** Any further comments? Mr Offer?

**Mr Offer:** No.

**The Acting Chair:** Seeing no further comments, all those in favour of Mr Turnbull's motion, please signify.

**Mr Turnbull:** A recorded vote.

**The Acting Chair:** A recorded vote. Then hold your hand until the clerk has called your name out. All those in favour?

**Ayes**

Offer, Turnbull.

**The Acting Chair:** All those opposed?

**Nays**

Hayes, Klopp, Murdock (Sudbury), Ward (Brantford), Wood.

**The Acting Chair:** The motion has been defeated.

**Ms Murdock:** I move that the French version of subsection 9.1(2) of the act, as set out in section 10 of the bill, be amended by striking out "sur le caractère représentatif du syndicat" in the first and second lines and substituting "de représentation."

The explanation is the same as yesterday, where it takes away "representative character" and translates it to "representation vote."

**The Acting Chair:** Any further discussion?

**Mr Offer:** I just want to speak to the aspect of this motion. I think I made my point yesterday, but I think it's important for me to reiterate that I'm still going to be looking for some clarification on this activity, because I just felt it was a given that where a section is passed in the English version, automatically the French version would be passed and would not have to be part of a motion.

**1710**

I know we had some discussion of that yesterday. I do not understand why we are in fact making specific motions of the French translation. I understand the need to make certain that the French version lines up with the English version and vice versa, but I didn't think it would have to be done section by section, motion by motion.

I'll just look for some clarification from legislative counsel—not through this committee, but legislative counsel and others—in order to satisfy myself as to the correct procedure that bills should follow in clause-by-clause.

**The Acting Chair:** Just so I'm clear, what you're asking is not for clarification right now from legal counsel but later from legal counsel as far as English and French interpretation are concerned. Legislative counsel has recognized that.

**Ms Murdock:** I don't know if I can help on this.

**The Acting Chair:** Well, we'll let legislative counsel deal with it, as he's directed his question to legislative counsel.

Any further comments on Ms Murdock's motion? Seeing none, all those in favour of Ms Murdock's motion please signify. Opposed? Carried.

Ms Murdock, you have another amendment?

**Ms Murdock:** I move that the French version of subsection 9.1(2) of the act, as set out in section 10 of the bill, be amended by striking out "sur le caractère représentatif du syndicat" in the first and second line and substituting "de représentation."

**The Acting Chair:** Any discussion? Seeing none, all those in favour of Ms Murdock's motion please signify. Opposed? Carried.

**Mr Turnbull:** Could I just have a little clarification on that? What was the difference between the two motions I've got in my binder, unless we've got the wrong thing?

**The Acting Chair:** The difference would be one says 9.1(1) and one says 9.1 (2).

**Mr Turnbull:** Okay, Sorry.

**The Acting Chair:** Mr Turnbull, do you have another motion to section 10, section 9.2 of the act?

**Mr Turnbull:** I think it's the Liberals.

**The Acting Chair:** Not according to my book. PCs.

**Mr Turnbull:** I move that section 9.2 of the act, as set out in section 10 of the bill, be struck out and the following substituted:

"Certification where act contravened

"If an employer or employers' organization contravenes this act so that the true wishes of the employees of the employer or of a member of the employers' organization are not likely to be ascertained, and, in the opinion of the board, a trade union has membership support adequate for the purposes of collective bargaining in a bargaining unit found by the board to be appropriate for collective bargaining, the board may, on the application of the trade union, certify the trade union as the bargaining agent of the employees in the bargaining unit."

**The Acting Chair:** Do you wish to comment on that, Mr Turnbull?

**Mr Turnbull:** Yes. The amendment maintains the adequate support requirement for certification. The proposed removal of the current threshold requirement of adequate membership support removes any semblance of respect for the employees' freedom of choice in this context. It appears to punish the majority of employees by taking away their right to choose because of violations of the act over which they often have no control.

The granting of representation rights to a trade union which does not represent the interests of the majority is contrary to democratic principles and violates the employees' freedom of association. It may well be that the union's failure to sign up a sufficient number of employees is not the result of employer intimidation, but rather the result of the employees' independent decision not to participate in collective action or to seek assistance from another union.

The proposed change to section 8 obscures these very real possibilities. An employer, or the representative of the employer, could commit an unfair labour practice by mistake or out of ignorance of the provisions of the act, resulting in a union being imposed when only a small percentage, for example 20%, of employees have signed union cards.

The board, which must protect collective bargaining, as the new purpose clause sets out, will not have to determine if the union has adequate membership support. This will be particularly onerous on small businesses, as they do not have in-house legal expertise to help them avoid an unintentional unfair labour practice. It may well be in the union's interest to be confrontational in the hope of provoking a manager to say or do something which the union could later rely on as support for an unfair labour practice. Without having to mandate the restriction on employer free speech, the government has effectively created one. Such a situation is not conducive to the cooperative relationship the bill purports to foster.

**The Acting Chair:** Mr Offer, would you like to comment?

**Mr Offer:** Yes, thank you. This is the section which is crucial. It is my understanding of the Labour Relations Act that if there is an unfair labour practice committed during the organization then certification may take place, if it's shown, first, that there has been an unfair practice, and second, it results in the true wishes of the employees not being able to be ascertained and—there's an "and" there—the board feels that there was adequate support, there was a level of support. There's an issue of number involved.

There's a twofold process: True wishes can't be ascertained, and there was a certain level or adequate support. That's my understanding of the Labour Relations Act as it now exists.

Just before I continue, I wouldn't mind knowing if my understanding of the act is correct. I see the ministry officials are shaking their heads in the affirmative.

It is my understanding that under Bill 40, the true wishes test still remains but the adequate support is taken out. So we are left with the fact that now certification without a vote can take place if an unfair labour practice has taken place and, second, the true wishes of employees are not likely to be ascertained.

Under the changes under Bill 40, the board does not have to decide whether there is a certain level of support for unionization in the workplace. I have had difficulties with this section, I must tell you, right from day one. The reason is that I believe, even if there is an unfair labour practice that has taken place which has resulted in some employees' wishes not being able to be ascertained, there still remains to the board the obligation, the responsibility, to determine whether there is an adequate level of support for the union.

The way Bill 40 is now styled, if an employer contravenes the act in such a way that the wishes of some employees, and it could be as few as two, are not likely to be ascertained—I'm using the words of the section—the organizers can then make an application, because they're showing contravention of the act by the employer, and two employees' wishes are not likely to be ascertained, to certify the union as the representative of the workplace.

1720

The problem I have is not that there should not be a penalty to the employer, because I believe there should be, but what we're left with under Bill 40 is that a workplace becomes unionized even though the vast majority of workers may not wish it to be. We foist a penalty on the employees for the actions of the employer. It's absolutely clear in my mind.

You can have a workplace of 100 people. An employer contravenes the act. It results in two employees feeling that their wishes are not ascertainable. In total, you might have 10 people who want to be unionized. Under the bill and under the application, everybody is unionized, even though 90% didn't want to be unionized.

Why would that happen? Why would one allow a penalty to be potentially foisted on the workers in the workplace? Why wouldn't we leave with the board the responsibility, before it makes that penalty of certification, to ascertain whether there is an adequate level of support for unionization in the workplace?

I am not saying that the employer should not suffer a penalty. I believe that they should not contravene the act and I believe a penalty should follow. But the penalty is not only on the employer; you're foisting the penalty on potentially the vast majority of employees, of workers, who do not wish to be unionized, and you are not making any obligation on the board to ascertain what the support is.

**Mr Wood:** It's not a penalty; it's a reward to the workers.



**Mr Wood:** Mr Wood says, as I speak to this, "That's not a penalty to workers; that's a reward." I say you're living in a dream world, because you have no right to say that. The only people, in my opinion, who have a right to say it are the workers. Far be it from some MPP sitting in some committee room, ostensibly dealing with a bill, thinking that you're having some consultation with the public when the real hearings are taking place in the Ministry of Labour, to decide that's a reward to workers. Isn't that disgusting?

I want to ask this question of the parliamentary assistant: Why would you take away the provision for adequate level of support, and what is the reason for not looking at or attempting to find out what the workers want before levying this penalty provision?

**The Acting Chair:** Ms Murdock, do you wish to comment on that? It is not necessary that you have to answer the questions, but I'll give you the opportunity to.

**Ms Murdock:** Thank you. In the previous motion, I believe either the one just before this or the other, that's when we removed those words.

The present practice at the board, as Mr Offer knows, is basically that whatever the action was in terms of unfair labour practice, it has to be fairly significant before the board will provide an automatic certification. Even in the instances when they do so, they try and make a determination, if at all possible, to determine whether or not the employees at that workplace even want to be represented by a union.

So you're right. If the board just willy-nilly went in and automatically certified everybody whenever an unfair labour practice occurred, it would be a penalty. But the thing is, they don't apply this section, at least according to the practice and statements we've seen out of the OLRB so far, if they cannot make a determination in any way as to whether or not there would be a true, representative vote of wishes of the employees.

I leave it to Mr Dean to discuss how we arrived at that particular section or why that twofold test is not going to continue to be used.

**The Acting Chair:** Mr Dean, would you wish to comment on that?

**Ms Murdock:** I want him to comment on that.

**Mr Tony Dean:** Just briefly, as you have been told, the board currently exercises its discretion to use this provision very infrequently and only in the most extreme circumstances. There has to be committed first a very grievous unfair labour practice that has such an impact in the workplace that the board is convinced without doubt that there can be no way of truly testing the views of employees with respect to trade union representation.

In applying the adequate membership test, the board has in fact gone well below majority support down to somewhere around the 29% or 30% support region. The difficulty with the adequate membership support test is that it can potentially encourage employers to commit grievous unfair labour practices very early in the campaign to instantly chill the organizing campaign, after which it becomes impossible for the board to test the true wishes of employees.

So the thrust, if you like, the rationale for this option, is simply that having an adequate support test in there in the first place is likely to incline those few employers who are likely to engage in this behaviour to in fact act quickly, act dramatically, and make sure that certification or that organizing process is killed once and for all. That's the rationale.

Let me just add that when I say "frequently," this is used perhaps three or four times a year by the board, and it's used very cautiously by the board. It's not expected that the board's approach in using this provision would change.

**Mr Offer:** I thank you for that response. I also worked under the belief that the board always looked to something in the area of 30%. That is why, I must say, I was very surprised that the government voted against reducing the threshold to 30%. That is why I was very surprised that the government voted against informing workers of their rights through information provided by the board. That is why I was very surprised that the government voted against making certain, as it could in legislative form, what unionization was, in the opinion of the organizer, and the position of the employer, through the board and under the protection of the board, for the protection of the worker. I was quite surprised.

I want to draw right back to the point that was made about the board infrequently ordering this. My alarm bells ring off the hook whenever I hear the ministry say that, because you're dealing with a board that is different from the board you have created. You are dealing with a board that worked from a preamble, but when you pass this bill, you are going to be dealing with a board that will be dealing with a purpose clause.

1730

Let's remind ourselves what the government has done. You have repealed the preamble, the direction and principles under which the board has operated. That's done; that's history. That type of argument about what the board has done in the past, let me tell you, will remain in the past. You have inserted not a preamble but a purpose clause. Let's remind ourselves what the first purpose of the board is: "to ensure that workers can freely exercise the right to organize by facilitating the right of employees to choose, join and be represented by a trade union of their choice, and to participate in the lawful activities of a trade union."

I don't have to go very far to remind myself of a lawyer who's going to stand up and say to the board: "Well, now, we have a contravention of the act. We have two employees here who have clearly indicated the employer has contravened the act and they were afraid to sign a union card." They're swearing to that, and we will in fact assume that to be absolutely true. The lawyers will then go on and say: "And board members," or board member, if we're speaking to one person, "let's just remind ourselves as to how you must rule. You must order certification because the province of Ontario has inserted this purpose clause, that workers can freely exercise the right to organize. If you don't certify this union, you, board, are in contravention of the purpose of the legislation."

Don't tell me about how boards have operated in the past, because they've operated under totally different rules,

they've operated under totally different principles. I dare say that the fact the level of support is now taken out is going to cause difficulties, is going to cause problems, is going to cause dissension, is going to cause penalties foisted on employees who might not have even known an organizing drive was taking place, because the government has refused to allow them, in legislative form, to be informed. That's the system and regime you want to put in this province. Thank you very much for freedom of choice.

**The Acting Chair:** Ms Murdock or ministry staff, would you like to respond?

**Mr Dean:** Can I just correct Mr Offer on one point? A substantial amendment was made to the purpose clause that removed reference to "facilitating" the right to organize and replaced it with the word "protecting," which Mr Offer appears to have taken as the centrepiece of his argument in terms of changes in board jurisdiction. The government, as I understand, responded to the concerns of Mr Offer and the business community about the potential for that change of jurisdiction and amended the wording. Just for clarification, I think that has to be put on the record.

**The Acting Chair:** Mr Turnbull first. Would you like to comment? I know Mr Offer is burning right here.

**Mr Turnbull:** Frankly, I'm disappointed with the answers from the government, but then I've been disappointed with every single answer from the government. This is bad legislation, and in the interests of moving along I propose the question now be put.

**The Acting Chair:** The question is being put. All those in favour of the question being put? All those opposed?

**Mr Offer:** No.

**The Acting Chair:** Go ahead, Mr Offer. You have the floor.

**Mr Offer:** I understand Mr Turnbull's hope, but as the ministry officials indicated that they had responded to concerns of mine with respect to the purpose clause, I must say that if that's how you've responded, you have not responded.

Be clear that what I have asked is for the principles to remain as a preamble. I do not want a purpose clause. I recognize that "facilitating" has been taken out and "protecting" has been put in, the impact of which will be absolutely the same. My argument stands, and I will tell you that you will be hearing those arguments made, without any question. This is nothing less than an erosion, a tearing away, of a worker's right to freely choose and to demonstrate to the board adequate support for unionization or the lack thereof. If you want to call the vote, fine. That's all.

**The Acting Chair:** Any further comments or questions? Seeing none, then all those—

**Mr Offer:** Recorded vote.

**The Acting Chair:** Recorded vote. Please keep your hands up until the clerk has called you out. All those in favour of Mr Turnbull's motion, please signify.

Ayes

Offer, Turnbull.

**The Acting Chair:** All those opposed?

Nays

Hayes, Klopp, Murdock (Sudbury), Ward (Brantford), Wood.

**The Acting Chair:** The motion has been defeated.

**Mr Offer,** you have a motion you wish to put forward.

**Mr Offer:** Yes. I move that section 9.2 of the act, as set out in section 10 of the bill, be struck out and the following substituted:

"Certification when act contravened

"9.2(1) On the application of the trade union, the board may certify the trade union as the bargaining agent of the employees in a bargaining unit if the board considers,

"(a) that the true wishes of the employees respecting representation by the trade union are not likely to be ascertained because the employer, an employers' organization or a person acting on behalf of either has contravened this act; and

"(b) that the trade union has membership support adequate for the purposes of collective bargaining.

"Idem, trade union

"(2) The board shall dismiss a certification application by a trade union if the board considers that the true wishes of the employees in the bargaining unit respecting representation by the trade union are not likely to be ascertained because the trade union or a person acting on its behalf has contravened this act.

"Expiry

"(3) A trade union whose certification application is dismissed is not entitled to make a further certification application respecting the employees in the bargaining unit until one year elapses after the dismissal."

**The Acting Chair:** Mr Offer, do you have any comments you wish to make on this?

**Mr Offer:** Yes, I do. The first point to be made, in my opinion, is that half of this is very similar to the motion to which we have already spoken. I've spoken about that at some length already.

The second half, however, is new. The issue that we're going to have in a few moments' time is, do you wish to protect the worker from intimidation and coercion or don't you? That's the question: Do you wish to protect workers in this province in an organizing drive from intimidation or coercion? You will be voting not yes or no, but aye or no, are you in favour or not.

I must say that I am fearful of the current reading of Bill 40. I discussed why. I've used examples why. I folded in what will happen at the board. The board will not look at just one section. They will be guided—not guided; they will be dictated to in their decision by the purpose clause. I've read that portion of the purpose clause which will say to the board: "You must act in this way. You must make a ruling which follows the purposes of the act."

But remember what we've been doing so far. We have taken it as a given that the only examples of intimidation, coercion or misinformation or unfair practices are from the employer. That's it. The fact of the matter is that we have heard in our public hearings—not in the ones that were



conducted by the Ministry of Labour, but in our public hearings—examples that coercion is not necessarily a monopoly of one, but there are examples of interference from organizers. I don't say in the majority of cases, but we did hear examples where workers themselves felt that their decision whether to be or not to be part of a union, whether to sign or not to sign, was interfered with.

Don't we think we should not only foist a penalty on an employer but also on the trade union? The penalty to the employer, if he or she contravenes the act, is automatic certification. I understand that. That's the way it has been in the act. It has had to pass two principles or two criteria. One was that true wishes could not be ascertained; secondly, adequate support. I believe the government is making a drastic error by taking out the adequate support. But there's no penalty for a trade union organizer. If a member has interfered with the choice of workers, what type of penalty can take place? You can't ban the trade union for all time and I don't think you should, but I do believe that there should be a penalty.

1740

There are examples of the one-year penalty in the act as it now exists, so this is not a terribly new penalty. There are examples where penalties are imposed on trade unions—again, a one-year penalty basically. I took that from other portions of the existing act, and said, "You don't have to reinvent the wheel in this case." Let us make a penalty for trade unions in the organizing. It's not that you're against trade unions when you do that. I hope government members would not think that I'm suggesting this amendment because I'm against trade unions. That's of course not the case. I'm suggesting this amendment because I am in favour of workers being able to express their own thoughts and opinions in as free a manner as possible. Penalties for contravention of the act by the employer and the trade union is the only way in which we do not do away with but certainly reduce the incidents of interference. We are going to shortly be able to decide whether you're in favour of, at least, protecting workers from interference.

Regarding the issues of information to workers and secret ballot votes for workers, those are amendments that have already been proposed and defeated by the government. You've lost that. You carried the amendments, but you lost your principle. Yes, sure, you had more people in the room today. You won and carried the amendments, but you've lost and given up the principle of workers' freedom and workers' right to choose. So, we're left with this, as to whether you want to say goodbye to protecting workers. You've already said that to the informing of workers, but now we're going to be asking you through this amendment, are you in favour of protecting workers or not? Are you so certain that the only incidents of interference in this province are by the employers? Are you so absolutely certain that you in this room with a clear conscience can say, "Never, ever has there been an incident of interference in choice by a trade union organizer to an employee?" That's what you're going to be asked to do. You are going to be saying, if you reject this amendment, "Absolutely, never, ever has there been an incident of employee interference

by a trade union organizer in any certification drive that has ever taken place in this province or that ever will."

To me, the answer is quite simple. No responsible person can ever say that this will never happen, and if you cannot say that, then you must vote in favour of the amendment or you are saying goodbye to protecting workers from interference in this province.

**Mr Turnbull:** We're going to be supporting this amendment. I think there's so much discussion about the relevant merits of clauses, but we've got to look at the fact that we've got to get back to having laws which are neutral. I'm afraid that this law that you're putting forward is not neutral. It is very heavily biased towards the labour movement.

The Conservative Party is clearly not against organized labour; it is also not against workers. In fact, I had a union leader visiting my office just three weeks ago and telling me very clearly his disdain for Bill 80, which we'll be looking at very soon, and talking about what is wrong with this bill. He was saying that he's very concerned that the government is wrong. You're tilting too much towards the unions. This is a union leader telling me this.

It's very clear that not just the members over here but you gentlemen on the other side in the NDP have a responsibility not just to represent your union buddies; you have a responsibility to represent the people of Ontario. Mr Ward, I know that there's a gentleman in the audience who's from your riding. He's spent a lot of time here. He introduced himself to me yesterday. He's here to see what you're doing. We do not want laws which tilt in one direction.

Clearly, from all of the evidence we received during these hearings, intimidation, when it does happen—and fortunately it doesn't happen too often in this province—can occur from both sides, from both the employer and the employee. To use that much-used phrase at the moment, we need a level playing field. This amendment would give a level playing field because it would also introduce penalties for labour unions that use intimidation, much in the same way as we've heard discussion from the government that it wants to stop intimidation from employers, which we agree with. But surely to God you cannot be opposed to an amendment which simply creates a level playing field. You are sending the wrong message to businesses and businesses are hearing the message—they're not deaf—and they are saying they're going to be leaving.

Have some sense, have some responsibility to the taxpayers and to the voters and to the people of Ontario and try to think about these amendments, instead of, like sheep, putting up your hands and voting down all of the opposition's amendments. Start thinking about the good of workers in Ontario.

**The Acting Chair:** Ms Murdock, would you like to comment? No?

**Mr Offer:** I'm sorry, I just can't let that go. I would like to, if possible, hear from the parliamentary assistant or ministry officials why they would not seek to insert a penalty on trade unions—

**Ms Murdock:** There is a penalty already, under section 59.

**Mr Offer:** —if there is interference.

**The Acting Chair:** Ms Murdock, do you wish to comment?

**Ms Murdock:** Sure. The first part—as Mr Offer himself has said, there are two parts to this. The one, we've already spoken to. You did at the very beginning.

The part that's new here is the freeze or penalty, as Mr Offer has said. Under section 59 in the existing Labour Relations Act, it isn't a year's penalty; I will say that. But if a trade union has obtained a certificate by fraud, "fraud" being—I would see that as fraudulent if there is any kind of coercion, intimidation or whatever. I don't know what your definition of it is.

**Mr Turnbull:** The legal definition is completely different for fraud and coercion.

**Mr Offer:** If we're going to talk apples, let's talk apples.

**The Acting Chair:** I don't mind how many have a part of the discussion, but I know Hansard would appreciate only one speaking at a time.

**Ms Murdock:** Thank you very much. There's also, under section 71, which is also mentioned in that section, an intimidation and coercion provision where "No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this act or from performing any obligations under this act," none of which is being altered. So, actually, probably under that section, and under a number of the provisions under this act, the the board can make those decisions.

I know that Mr Offer continually claims—

**Mr Offer:** There's no penalty.

**Ms Murdock:** —that there isn't a year, that there is not—

**Mr Offer:** Don't say that it's already in there. There's no penalty.

**Ms Murdock:** I'm not saying that there's—well, there is a penalty if your certification is removed or you're not allowed to have one.

**Mr Ward:** A penalty to the workers.

**Ms Murdock:** Why is that not a penalty, but it is a penalty if the union gets into the workplace?

**Mr Offer:** I read the Labour Relations Act. I don't profess to know it backwards, forwards and inside out, but I looked for exactly that point. I said if you're going to insert a penalty on an employer for interference with an employee in an organizing drive and that penalty is automatic certification, then surely there must be something in the Ontario Labour Relations Act to exert the same penalty on a trade union if it interferes—"with penalty." And I couldn't see it.

**Ms Murdock:** Yes, they take away the certification. That's the penalty.

**Mr Offer:** That is not a penalty.

**Ms Murdock:** Just a minute, please. Explain to me how it is a penalty if the union is certified if there has been an unfair labour practice occurring, and that's a penalty to the employer, but it's not a penalty if the trade union loses the certification if the trade union performed an unfair labour practice. Where is the difference in terms of penalty?

**Mr Offer:** When can they bring back the application?

**Ms Murdock:** Well, there is that. You're right; there's no time limit. But I'm talking about there is a penalty.

**Mr Offer:** What you're saying is there's a hockey game and there's a penalty for tripping. A person trips somebody and then is told, "Don't do that again."

**The Acting Chair:** I would just notify the committee to adjourn debate, as the bells—

**Mr Offer:** I say there's a difference.

**The Acting Chair:** Mr Offer, I'm sorry. I have to interrupt, as the bells are ringing and there are five minutes. The committee is now adjourned until Monday.

The committee adjourned at 1754.





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### STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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- \*Acting Chair / Président suppléant: Hope, Randy R. (Chatham-Kent ND)
  - Vice-Chair / Vice-Président: Huget, Bob (Sarnia ND)
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- \*Klopp, Paul (Huron ND)
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- \*Turnbull, David (York Mills PC)
  - Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgianne ND)
- \*Wood, Len (Cochrane North/-Nord ND)

#### Substitutions / Membres remplaçants:

- \*Hayes, Pat (Essex-Kent ND) for Mr Huget
- \*Hope, Randy R. (Chatham-Kent ND) for Mr Dadamo
- \*Morrow, Mark (Wentworth East/-Est ND) for Mr Kormos
- \*Ward, Brad (Brantford ND) for Mr Waters

\*In attendance / présents

#### Also taking part / Autres participants et participantes:

Dean, Tony, administrator, office of collective bargaining information, Ministry of Labour  
Kovacs, Jerry, legal counsel, Ministry of Labour  
Murdock, Sharon, parliamentary assistant to the Minister of Labour

Clerk pro tem / Greffier par intérim: Decker, Todd

#### Staff / Personnel:

Spakowski, Mark, legislative counsel



























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